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FINAL REPORT AND RECOMMENDATIONS OF THE GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE

JOINT HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

AND THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON THE FINAL REPORT AND RECOMMENDATIONS OF THE GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE

MARCH 30, 1987, WASHINGTON, DC

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FINAL REPORT AND RECOMMENDATIONS OF THE GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE

TUESDAY, MARCH 30, 1987

U.S. SENATE, SELECT COMMITTEE ON INDIAN AFFAIRS, MEETING JOINTLY WITH THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, U.S. SENATE, AND COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, HOUSE OF REPRESENTATIVES,

Washington, DC.

The committees met, pursuant to notice, at 2:05 p.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye and Burdick.

Staff present: Patricia Zell, chief counsel; Alan Parker, staff director; Mary Jo Vrem, professional staff member; Lynn Toledo, staff assistant; Dan Lewis, professional staff member; Ipo Lung, professional staff member; Russell R. Brown, senior professional staff, Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power; Bruce McKay, legislative assistant for Senator Burdick; Steve Lanich, professional staff member, Subcommittee on Water and Power Resources, House Interior and Insular Affairs Committee.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, AND CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The hearing will please come to order.

I'd like to welcome all of you to this joint hearing of the Senate Committee on Indian Affairs, the Senate Committee on Energy and Natural Resources, and the Water and Power Subcommittee of the House Interior and Insular Affairs Committee.

We gather this afternoon to examine the recommendations of the Department of the Interior's Garrison Unit Joint Tribal Advisory Committee. Responding to the finding of the Garrison Diversion Unit Commission's Final Report that—

> The tribes of the Standing Rock and Fort Berthold Indian Reservations bore an inordinate share of the cost of implementing Pick-Sloan Missouri Basin Program mainstream reservoirs.

Secretary Hodel established a committee on May 10, 1985, and directed the committee to find ways to resolve the inequities borne by the tribes.

The committee submitted its report to the Secretary on May 23 of last year, and we're here today to hear from former members of the Garrison Commission, former members of the Joint Tribal Advisory Committee, the Assistant Secretary for Indian Affairs, the Army Corps of Engineers, and the tribal chairman of the Three Affiliated Tribes of Fort Berthold, and the Standing Rock Sioux Tribe. History will show that while these major relocations of Indian people were taking place so that the Garrison and Oahe Dams could be built, the American Indians, Chicago Conference, adopted a Declaration of Indian Purpose in June 1961, which stated:

> When our lands are taken for direct public purpose, scattering our people and threatening our continued existence, it grieves us to be told that a money payment is the equivalent of all the things we surrender. Our forefathers could be generous when all the continent was theirs. They could cast away whole empires for a handful of trinkets for their children, but in our day, each remaining acre is a promise that we will still be here tomorrow. Were we paid a thousand times the market value of our lost holdings, still the payment would not suffice. Money never mothered the Indian people as the land has mothered them, nor have any people become more closely attached to the land, religiously, and traditionally.

Before Assistant Secretary Swimmer presents the report today, we will have a short video presentation that was prepared by the Three Affiliated Tribes of Fort Berthold to give those of us who have not yet had the opportunity to visit there a visual image of the subject of the Committee's Report.

I would like to, at this juncture, with pride, recognize the Congressman from North Dakota, Representative Byron Dorgan, who will introduce the representatives of the Three Affiliated Tribes of Fort Berthold and the Standing Rock Sioux Tribe.

Congressman, welcome sir.

STATEMENT OF HON. BYRON L. DORGAN, U.S. REPRESENTATIVE FROM NORTH DAKOTA

Mr. DORGAN. Thank you very much, Senator.

I wanted to be here to introduce the representatives of the Standing Rock Sioux Tribe and Three Affiliated Tribes and I wanted to say, at the outset, a special thank you to the subcommittees and committees who have agreed to hold this joint meeting to study the recommendations of the Garrison Unit Joint Tribal Advisory Commission.

Now, this report, which comes from a great deal of work and a great deal of analysis, is important to those of us in North Dakota, and particularly to the Standing Rock Sioux Tribe and the Three Affiliated Tribes of North Dakota. The Commission Report documents fairly carefully the losses incurred by the two reservations. And, North Dakota generally lost some 500,000 acres of farm land in order to provide downstream flood protection. We're waiting for the fulfillment of the promise, the second half of the promise.

The promise was, that if North Dakota accepted a flood that comes and stays forever, the Federal Government promised to allow the use of waters behind that flood for economic development and for municipal water systems in North Dakota. Part of that promise was a promise to the Indian reservations, and we've exhibited all the costs now, we're waiting for the fulfillment of the promise, the second half of the bargain, as now described in the recommendations of the Joint Tribal Advisory Commission.

Let me just make one further comment. My father used to herd horses near Elbow Woods, ND, when he was a young man. Elbow Woods, ND doesn't exist anymore. When I was a young boy, my father used to take me up to Elbow Woods and drive me around and show me where he used to work with livestock up on the Fort Berthold Reservation, North Dakota. That's under water. It has been ever since the dam was built and will be forever. It was beautiful territory, as I'm sure the tribal chairman will describe today. It's part and parcel to what we've lost, what the tribes have lost, and what we must provide compensation for as a result of the Garrison Dam.

So, Mr. Chairman, I'm pleased today to be here to thank you for holding the hearings and to present Mr. Edward Lone Fight, chairman of the Tribal Business Council of the Three Affiliated Tribes, and Mr. Allen White Lightning, councilman for the Standing Rock Sioux Tribe. These gentlemen, as you indicated, will explain the recommendations of the Commission Report.

Mr. Chairman, thank you very much. I note that our distinguished senior Senator from North Dakota is in the room, Senator Burdick, who has worked long and hard on these recommendations as well, and all of us appreciate your attentiveness to this very important question that confronts us, the tribes and the U.S. Congress.

Thank you.

The CHAIRMAN. Thank you very much, Congressman.

Will the representatives of the Three Affiliated Tribes step forward and explain the video presentation?

Mr. LONE FIGHT. Mr. Chairman, I'd like to call on Bill Royster and Glenn Raymond to present the video for the members of the committee and also the viewing audience.

[A video presentation was given.]

Mr. LONE FIGHT. Mr. Chairman, that concludes the presentation, and we'd like to thank the committee for allowing us to show the video presentation.

The CHAIRMAN. Before we proceed any further, without objection, the statement of Senator Bill Bradley, the chairman of the Subcommittee on Water and Power, will be made part of the record at this point.

[Prepared statement of Senator Bradley appears in the appendix.]

The CHAIRMAN. I also have a statement here of the chairman of the Subcommittee on Water and Power Resources of the House Committee on Interior and Insular Affairs, the Honorable George Miller. Without objection, his statement will be made part of the record.

[Prepared statement of Mr. Miller appears in the appendix.]

The CHAIRMAN. We will now have a panel consisting of Mrs. Ann Zorn, a former member of the Garrison Diversion Unit Commission, of Las Vegas, NV, and Mr. Norman "Ike" Livermore, former member of the Garrison Diversion Unit Commission, San Rafael, CA.

Welcome, Ms. Zorn. Mr. Livermore is——

Ms. ZORN. Mr. Livermore is unable to be here because of illness, and he asked that I read his statement into the record for him, if that will please you.

The CHAIRMAN. Without objection. His statement will be made part of the record.

STATEMENT OF ANN ZORN, FORMER MEMBER, GARRISON DIVERSION UNIT COMMISSION

Ms. ZORN. Thank you, sir.

I am Ann Zorn. I reside in Las Vegas, NV. In the fall of 1984 I was privileged to serve as a member of the Secretary's Garrison Diversion Unit Commission, and I very much appreciate the opportunity to come before you today.

The Garrison Commission Report recognized that earlier Federal, moral, and legal commitments to North Dakota and the Indian tribes affected by the Garrison and Oahe Dams had not been met. Mr. Norman Livermore and I were the commissioners most instrumental in calling for the creation of the Joint Tribal Advisory Committee to examine the Indian issues in greater detail than we were able to do at that time. I support the conclusions and recommendations of the JTAC report of May 1986, and I would like to tell you why I felt so strongly that JTAC should be created.

The testimony and background information gathered by the Garrison Commission made it clear that there was a Federal obligation to North Dakota for the sacrifice of the Missouri River bottom lands. It was also clear that the Indian citizens of North Dakota shouldered a substantial portion of that sacrifice. All of the bottom lands, more than 150,000 acres, belonging to the Three Affiliated Tribes were inundated by the waters behind the Garrison dam and those acres constituted more than one-third of all the land under Lake Sakakawea.

The bottom lands in the "Taking Area" were not just land owned by the tribes. They were the economic and social base of the tribes. The uplands offered as "in lieu" lands could not be counted as equivalent to the bottom lands, for they couldn't support the same type of ranching and agricultural economy which the bottom lands had provided. Ninety percent of the families of the Fort Berthold reservation lived along the river and had to be relocated. The maps show a concentration of homes in the bottom land area before the dam was built, but there is a widely dispersed pattern of residence after the people were moved to the uplands.

Unfortunately, there does not seem to be any "in lieu" solution for the social trauma these families and the tribes experienced when relocation scattered a previously concentrated and cohesive settlement. When schools, hospitals, and health services disappeared or diminished. When distances between families and friends were magnified by the loss of bridges and roads. A reasonably self-sufficient community of people was turned topsy-turvy and left to right itself without the promised assistance or means of establishing a new economic base forthcoming. It's small wonder that the pre-Garrison Dam unemployment rate was only 5 to 6 percent, but today has risen to 70 to 80 percent.

Mr. Livermore and I took the opportunity to visit the reservations in December 1984. I spent the daylight hours of December 12 seeing some of the Fort Berthold Reservation by car and much of it from the air. I met with tribal elders, talked with people who are running the day-to-day programs at tribal headquarters, and listened to the experiences of those who had lived the story. When I left Minot for the long drive to the reservation, I knew from the crunch of the ground underfoot that the temperature was close to zero. The snow covered landscape reminded me a little of Wisconsin or New Hampshire. But, I also heard of folks who had to choose between telephones and heat during the long winters because of the costs. More often than not they opted for the heat and had to forego the safety net of the communication line. Viewing the reservation from the air, my guides pointed out the old townsites and bridge locations that were now inundated. And I saw how the land areas were divided by the lake waters. The old expression, "You can't get there from here", is the only way to describe the impact on the critical transportation systems. I wondered briefly why the tribes did not utilize the recreational potential of the long shoreline spread out below us, until I learned that the tribes did not have options there, but others did.

In searching my mind for a personal experience which I could relate to the impact of the Garrison Dam, some comparable occurrence that would help me understand, the closet I could come, and it was inadequate, was to remember the destructive nature of ill-planned freeways which divided and conquered close-knit ethnic neighborhoods in the New England area where we lived in late 1950's and early 1960's.

I am including with my statement, the short notes from which Mr. Livermore and I reported back to our fellow commissioners. I am pleased to say that there was unanimous approval of the Indian issues recommendations included in the final report. We recognize the water quality and health problems, as well as the economic problems, but time constraints for completion of our report meant that they couldn't be given the detailed analysis they deserved. And, our intent was that the JTAC examination of the M & I water needs would encompass all of these issues.

Again, I endorse the JTAC findings and recommendations. I ask that you adopt them and trust that the implementation will not be too far in the future.

Thank you very much, Mr. Chairman.

[Prepared statement of Mrs. Zorn appears in the appendix.]

The **Chairman**. Thank you very much.

The Department of the Interior has suggested that the report of the Tribal Advisory Committee does not provide adequate documentation to justify and establish that the tribes are entitled to additional financial compensation in the form of substitute or replacement value of the economic basis lost, as a result of the action taken. Do you believe that there is adequate documentation to establish this claim?

Ms. ZORN. I think we fully thought so at the time that we were bringing the issues forth. We expected more documentation to come from the JTAC examinations, too.

The CHAIRMAN. How did the Tribal Advisory Committee arrive at the amounts for additional financial compensation?

Ms. ZORN. I don't know precisely how they arrived at it. I've read the report and assume that the types of economic calculations that were made, as described in the JTAC, was what they used. It was nothing that came from the Garrison Commission itself, sir.

The CHAIRMAN. Your statement this afternoon will be very helpful to all of us.

Ms. ZORN. May I read Mr. Livermore's statement, sir?

The CHAIRMAN. If you wish to, yes.

Ms. ZORN. Thank you.

STATEMENT OF NORMAN LIVERMORE, FORMER MEMBER, GARRISON DIVERSION UNIT COMMISSION

Thank you for your letter of March 25, inviting me to present testimony at your oversight hearing which is being held to consider the recommendation of the Garrison Unit Joint Tribal Advisory Committee. I regret very much that a temporary indisposition prevents my appearing before you personally.

My interest in and concern for justice to Indians dates back many years, but was particularly activated by evidence presented by Indian tribes at the Garrison hearings which were held in Washington and North Dakota in the latter months of 1984.

During the course of these hearings, it became clearly evident to me that the Indian tribes most acutely involved, the tribes at Fort Berthold and Standing Rock Reservations, were given grossly inadequate consideration in the then-proposed Garrison Unit legislation. Another Commission member, Ann Zorn, joined with me in evincing particular concern as to the Indians' plight. As a result, she and I took extra time to visit the reservations; she to Fort Berthold and I to both Standing Rock and Fort Berthold.

The conditions observed at one or both of these reservations were enough to cause tears. Some of them were woefully inadequate housing, a tragically shattered road system, inadequate access to the shorelines of Lakes Oahe and Sakakawea, the villages destroyed by inundation, a major highway bridge rendered useless, and countless infrastructures destroyed.

In addition to these sad evidences of physical deterioration, we were made keenly aware of social tragedies and U.S. Government promises not kept; inadequate hospital and school facilities; inexcusable lack of notice of the effects of water impoundment, destruction of social structures, lack of respect for the burial place of the famous Chief Sitting Bull, promises unkept as to water and power rights, and grossly inadequate payment for Indian lands condemned for the inundation area caused by the dams.

Overall, it appears to me that there have been two overriding inadequacies involved in the settlement that was proposed for the two reservations by the original Garrison legislation: One, compensation proposed for the tribes was entirely inadequate when measured against the economic and social losses they have suffered. Two, in urging the original Garrison legislation, North Dakota leaders seem to express little, if any, concern for Indians' problems. Of all the massive evidence the 1984 Commission was presented with, urging the U.S. Government to "pay back the debt owing to the State of North Dakota," I can recall no evidence, other than that of the Indians themselves, that specifically mention the tribes' plight. In fact, I recall at one session when I posed the question, you say a debt is due to the people of North Dakota, are not Indians part of the people. The answer I got was, oh, we are not concerned about them. They are handled from Washington.

Mr. Chairman, I have read with approval the May 23, 1986 final report of the Garrison Unit Joint Tribal Advisory Committee, and I hope and trust that you and the committees meeting here today will recommend its full adoption.

I have noted Congressman Dorgan's February 28, 1985 statement in the subcommittee hearings on the Garrison Diversion Unit Commission's Recommendations, when he said, I am pleased to see an underscoring of the fact that we do have a serious commitment to the Indian tribes, and we can't keep putting it under the carpet and walking away from it.

Mr. Chairman, I would like to emphasize these same sentiments and strongly urge that you act upon them.

Respectfully submitted, Norman B. Livermore, Jr.

Thank you very much for allowing me to read that.

[Prepared statement of Mr. Livermore appears in the appendix.]

The CHAIRMAN. Thank you very much. And, will you thank Mr. Livermore on behalf of the committee.

I note in Mr. Livermore's report, that there was a lack of respect for the burial place of the famous Chief Sitting Bull. And you were on this inspection trip with Mr. Livermore.

Ms. ZORN. I did not cover the Standing Rock Reservation, but I am certain that you will hear testimony this afternoon to that effect.

The CHAIRMAN. Thank you very much. We appreciate it.

Ms. ZORN. Thank you, sir.

The CHAIRMAN. Our next panel consists of Mr. C. Emerson Murry, former member and chairman of the Joint Tribal Advisory Committee, of Bismarck, ND; Mr. Brent Blackwelder, former member of the Joint Tribal Advisory Committee, of Washington, DC; and Mr. Hans Walker, Jr., former member, Joint Tribal Advisory Committee, of Washington.

Gentlemen.

STATEMENT OF C. EMERSON MURRY, FORMER MEMBER AND CHAIRMAN, JOINT TRIBAL ADVISORY COMMITTEE, OF BISMARCK, ND

Mr. MURRY. Thank you, Mr. Chairman. I will go first, if I may.

My name is C. Emerson Murry, Bismarck, North Dakota. I was the chairman of the JTAC appointed by the Secretary of the Interior. You will recall its purpose was to look at the damages resulting from mainstream Missouri River dams and the Oahe and Garrison Reservoirs, on the Fort Berthold and Standing Rock Reservations. The committee did determine that their charge included the entire Standing Rock Reservation, including the portion in South Dakota. The responsibilities under the charter are included with the letter of transmittal, that's included with the JTAC report.

The committee has spent many hours and days in public hearings in the State of North Dakota, both on reservations and at other central points within the State. All of the testimony was recorded. The staff of the committee made an extensive search of both Congressional and Agency documents and communications, as well as studies that were carried on prior to, during, and after the construction of the Oahe and the Garrison Dams. These hearings, searches and studies resulted in the committee concluding that what you have heard earlier from the GDU Commission report was entirely correct when it stated:

> Implementation of the Flood Control Act of 1944 had a significant impact on Indian tribes in North Dakota. The Commission received evidence that the Federal Government had not provided the promised assistance to replace the economic base of the State and tribes.

We completely concur with the perhaps somewhat preliminary judgment of the GDU Commission.

You will note, if you've received the report, that the general direction of the recommendations is to replace what was destroyed by the two dams so that the tribes may obtain economic independence. No recommendation, however, calls for a lump sum per capital payment to the tribes or tribal members.

There was no question in our minds that the construction of the two dams and the impoundment of waters destroyed the major economic base of both the Standing Rock and the Fort Berthold Reservations. The remaining lands of the reservations simply could not support the ranching, farming and gardening economies that were so important. For instance, in the case of the Forth Berthold Reservation, these activities made it one of the few, possibly even the only, economically self-sufficient reservation in the country. The lack of timber, water and shelter in the upland areas to which the tribal members were relocated further affected the economic loss, as well as having a major impact on the traditional way of life and the quality of life for all members. In the case of the Fort Berthold Reservation, physical isolation of segments of the reservation caused by the rising waters of the impoundment severed family, tribal and institutional support ties and facilities. The emotional impact, and we found it to be material, of this abrupt and radical change, could not be quantified, but it certainly was major, and its effects last until this day.

The Indians intensely feel that they were not compensated for the taking of their lands by the United States and the loss of the benefits that flowed therefrom. Transfer of title of these Indian lands to the United States was never really voluntary, since the Indians felt intimidated by the fact that construction of the dams had begun even before the Indian lands were acquired. Assurances given both expressly and by implication by various Federal officials that the problems anticipated and brought forth by the Indians would be remedied, raised expectations which, in many, many cases were not and have not been fulfilled.

In some cases, not only was the economic base, as it existed then, destroyed, but the potential for future expansion was also destroyed. For instance, in the fertile alluvial lands of the Fort Berthold Reservation flooded by Lake Sakakawea, the tribes lost over 40,000 acres of potentially irrigable land. And, these were lands upon which the costs of developing irrigation was only a fraction of the costs that would be involved in developing remaining tribal lands that may be irrigable. The difficulties of transportation between the divided segments of the Fort Berthold Reservation because of lack of bridges further erodes the possibility of the extraction of natural resources such as lignite coal and the establishment of processing or manufacturing industries.

The committee found that the tribes are entitled to be made whole for their specific losses resulting from the two major impoundments, and for the loss of their economic potential. Among the major recommendations of the committee are the development of irrigation to support farm and ranch economies; the return of excess lands currently held by the Corps of Engineers beyond that required for reservoir operation in order to develop a recreational potential on the reservation; replacement of infrastructure destroyed by Federal action such as health care facilities, school dormitories, a bridge upon the Fort Berthold Reservation to provide access between communities and central facilities, adequate secondary roads, and the replacement of primary inpatient health facilities and outpatient services; access to a reasonable amount of Pick-Sloan Basin power on a preferential-right basis; a development of a municipal, rural and industrial water systems; upgrading of replacement housing in both numbers and quality to provide for the necessary level of comfort and meet the health needs in the environment in which the people live; and the establishment of a compensation program to the tribes consistent with a value of their economic loss resulting from the impoundments.

In regard to the compensation program for the loss of the economic base, two methods of calculation were presented and recognized by the committee as rational methods of calculating this compensation. The committee recommends that such general compensation program be no less than the smaller compensation amount resulting from the application of these two methods.

I will not attempt to further detail the findings and recommendations of the committee, as I believe them to be adequately explained in the committee report, and certainly more adequately explained in the extensive records of testimony and documents that were filed with the committee. It is my understanding the representatives of the two tribes will present specific programs and priorities which are consistent with the findings and recommendations of the committee in meeting the justified entitlements of the tribes and the Indian citizens affected.

It is noted that based upon the initial report of the Garrison Diversion Unit Commission, the Garrison Diversion Unit Reformulation Act of 1986 included an authorization of $67,910,000 for the development of 17,580 acres of irrigation upon the two reservations, and the sum of $20.5 million for municipal, rural and industrial water systems as a partial recognition of tribal and Indian entitlement resulting from the dams.

It is recognized that the costs of meeting these tribal entitlements is not small. But, I would also note, that over $3 billion of flood control benefits have occurred to lower Missouri Basin states as a result of these mainstream dams. There have been major increases in navigation benefits to these lower states of over 3 million tons a year, and the advantages to them of the major blocks of low cost preference power is substantial. When weighed against these benefits, the cost of attempting to make the two tribes whole for helping make this all possible, is moderate.

I know I speak on behalf of all members of the Joint Tribal Advisory Committee when I urge the most serious consideration of the tribal needs and entitlements contained in the report and in the recommendations of the committee.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Murry appears in the appendix.]

The **Chairman**. Thank you very much, Mr. Murry.

Mr. Blackwelder.

STATEMENT OF BRENT BLACKWELDER, FORMER MEMBER, JOINT TRIBAL ADVISORY COMMITTEE, OF WASHINGTON, DC

Mr. **Blackwelder**. My name is Brent Blackwelder, and I'm in my current position, vice president of the Environmental Policy Institute. It was a privilege to serve on the Tribal Advisory Committee, and I fully support the recommendations contained in the report.

I will just make a couple of comments so as not to repeat some of the things that you've heard already. One of the concerns that impressed upon me during the course of the committee's deliberations, was the fact that the Indians were excluded from any of the power revenues when the dams were actually built. Now, if you would imagine a situation where a prudent businessman owned property along the Missouri River and the Federal Government wanted to take it, that individual would negotiate and probably get some adequate compensation and want to be getting a cut in the revenues from power. But, in fact, not only did the Indians not get any of the power revenues generated by the dams at Garrison or Oahe, they have to fight to try to get some of the preferential power, to which they feel entitled, and which we recommended. But, that's how bad the situation actually was.

Another point that I'd like to make is that, to my knowledge, the Department of Interior never initiated any discussion with the Tribal Advisory Committee members to ask us questions, if they had any, about the report. I called several times, saying that I would be glad, as an individual, to talk with them if they had some questions. And I note, in reviewing the Assistant Secretary's testimony, that he says we do not have adequate documentation on the damage claims, when in fact he makes no further comment than that. What in fact are those inadequacies and where does he feel the Advisory Committee made a mistake. I hope that those questions could be probed. We stand ready to answer questions and I know you will hear some testimony later today about the precise method by which those figures were calculated. If there's a problem in that, I think it should be out in the open, not just dismissed as it was with one remark.

Another comment I'd like to make is that there's a real opportunity here for scheduled funding of this compensation so that some innovative irrigation and municipal water supply and rehabilitation of infrastructure can occur, using the latest in water and energy efficiency improvements. The report references those at some points, and I and my organization fully support those.

One question comes to mind that will pose a dilemma for the committee: in tight budget times, how can this compensation be afforded, where does it fit into priorities. I think the question here is more a matter of right and just compensation. The Indians were deprived in a most unfair manner of resources vital to their livelihood, to their self-sufficiency, and we as a matter of right, ought to make that compensation and not delay any further after decades. So, it's not a question of can we afford it, but there is a right and an entitlement here, and in a nation as wealthy as we are, we ought to be able to make that budgetary commitment and fulfill this entitlement.

I stand ready to answer any questions you might have.

The **Chairman**. Thank you very much.

Mr. Walker.

STATEMENT OF HANS WALKER, JR., FORMER MEMBER, JOINT TRIBAL ADVISORY COMMITTEE, OF WASHINGTON, DC

Mr. **Walker**. Mr. Chairman, my name is Hans Walker, Jr. I am a member of the Three Affiliated Tribes and have a practice here in Washington, DC.

I want to make a few comments about the report and emphasize several points. First, this was not a willing buyer-willing seller situation. This was a very unwilling seller and very threatening buyer. These Indians knew the value of the land they occupied. The Three Affiliated Tribes had been on the Missouri River since before the United States acquired this area from France in 1803. In fact, they were there in that village when the expedition sent by President Jefferson wintered at their village in 1804 and 1805. They occupied permanent villages and practiced agriculture in that area on the alluvial plain of the Missouri River.

They had been there for centuries before that. They knew the value of the river bottom. They resisted the offer to buy their land. In fact, they offered a lieu area free of charge to the United States as a place to place this reservoir. On the other hand, the officials of the United States bargaining for the United States were very threatening. They threatened to take the land by condemnation and if verbal threats were not enough, they in fact had commenced construction of the dam below the reservation, which was a perfectly obvious and threatening situation to the Indians on the reservation. The Indians were well aware that their neighbors to the north had been inundated by the Fort Peck Dam.

Now, they did strike a bargain. They did strike a bargain under threat, but they didn't get what they thought they were getting. There were many inferences, and implications and promises made in public meetings by officials of the United States with members of these tribes.

One of the promises that I would like to emphasize is that which relates to electric power. Now, these Indians had occupied an area in which there was natural shelter and logs for construction of homes, that were adequate for that area. They were now moved to areas on the upland where they have frame homes and their electricity costs run from $600, $700, $800 a month. On the river bottom they had sources of fuel, wood and coal, and the log homes were adequate for the severe conditions of that area. That has all been lost. They have to pay now, exorbitant prices for electricity. If the promise that had been made for a block of electricity for this tribe, been given them, they could have met this kind of cost which is now unbearable for many members of the tribe.

The gist of the bargain that has gone wrong for this tribe, I think in my mind, relates to the quality of the soil. The quality of the soil in which they resided on the river bottom was, if you were to rate soil from 1 to 10, was probably close to 10. Now, they were moved to a higher ground, where the soil was probably a two or a three. Now, here were people who were expected to move from the bottom lands, take a few dollars, move to the high lands and carry on as before. There is no way in the world that anyone in the world could carry on under those conditions. I don't believe that if you were to take the farmers of the Red River Valley in North Dakota, which has similar soil, place them on the plains of Wyoming, that they could carry on as they did before. No one can do it.

Now, finally, one other matter that is not in the report, that I would like to bring to the committee's attention, is the fact that the Corps of Engineers, when they took the land, did not take all the land that was needed for inundation. There are areas that were inundated without having been taken and paid for. Moreover, there are areas there where the water action of the reservoir is continually eroding away land that was not taken. There are large areas that are eroded every day that were not compensated for and no action taken by the Trustee, the Interior Department, or the Corps of Engineers, when this matter has been brought to their attention.

Thank you, Mr. Chairman.

The CHAIRMAN. Gentleman, I thank you very much. I'm trying to recap what I've heard so far.

Soon after the passage of the 1944 Flood Control Act, negotiations began for the acquisition of the land to build a dam, is that correct?

Mr. WALKER. Yes.

The CHAIRMAN. Negotiations went on and were completed in 1951?

Mr. MURRY. Actually, I think I'd refer that to Hans, but the negotiations were not completed until after the dam was started and my recollection is the construction of the dam started in 1949.

Mr. WALKER. That's about right.

The CHAIRMAN. Now, you have described the seller as an unwilling seller, and the buyer as a threatening buyer. Did the Affiliated Tribes or the Indians have any legal representatives?

Mr. WALKER. Yes; they did have legal counsel at the time. But, of course, Mr. Chairman, it was very apparent to the Indians that the United States could take the land. In fact, they had demonstrated upstream that they could do it and in fact, there were some people on the reservation that thought that there was no way in the world that the United States could dam that river. But, they could see that it had been in fact done on the Fort Peck Reservation.

The CHAIRMAN. 1944 was wartime.

Mr. WALKER. That is right.

The CHAIRMAN. I would presume the people representing the Government came to you in uniform?

Mr. WALKER. Yes; there were representatives of the Army Corps of Engineers there.

The CHAIRMAN. Now, you said the buyer was a threatening buyer. How did they threaten you?

Mr. WALKER. They threatened to take the land by condemnation, and in fact they commenced construction on the river before they acquired the land, and it was apparent to the Indians that that would be flooded regardless. The dam was coming, they were building it.

The CHAIRMAN. Even before the negotiations were completed, even before papers were signed?

Mr. WALKER. That's right.

The CHAIRMAN. Construction began?

Mr. WALKER. Yes, sir.

The CHAIRMAN. Did you complain to the Corps?

Mr. WALKER. Well, I was not there at the time, but I know that there was a strenuous opposition to the taking, and in fact, I think the negotiations were finally completed after a directive to complete the negotiations with the tribes.

The CHAIRMAN. You are telling this committee that the construction began before negotiations were concluded?

Mr. WALKER. Yes, sir.

The CHAIRMAN. Is that your finding also?

Mr. BLACKWELDER. Mr. Chairman, in the case of the Oahe Reservoir, a decade later, essentially the same story was repeated all over again in the case of the Standing Rock Sioux.

The CHAIRMAN. Mr. Blackwelder, you spoke of economic benefits to non-Indians resulting from the construction of this dam, recreational benefits and such, also the availability of electricity, and the Indians who gave up the land did not benefit from this. That was not part of the negotiation?

Mr. BLACKWELDER. Essentially, the Federal Government said, we're giving you the compensation here to take care of most of the problems and other verbal promises were made about you getting certain benefits from power, from shoreline development and so on, and it turned out these promises were essentially hollow. If you view the areas today, for example, you will not see the kind of shoreline development that was promised. In fact, one of our recommendations is that that development should occur. And, you will not see the Indians benefitting from the power as the non-Indian populations are.

The CHAIRMAN. Just for the record, I know it's in the document somewhere, but how many acres were involved?

Mr. MURRY. Mr. Chairman, from the Three Affiliated Tribes I believe it was 156,000 acres. I'd have to turn to the report——

The CHAIRMAN. 156,000 acres of irrigable land?

Mr. MURRY. Of river bottom land, yes, sir. Much of it irrigable.

The CHAIRMAN. What sort of compensation did the U.S. Government provide?

Mr. MURRY. If I may read just briefly from an area of the report, Mr. Chairman?

The CHAIRMAN. Please do.

Mr. MURRY. Mr. Chairman, we had representatives of the tribe who had personal knowledge of the negotiations who testified before us, and they indicated that the offers and negotiations had a continuing downward trend from the figures originally discussed as they became more particularized and as the negotiations came closer. And, so they testified that there was a belief on the part of the Indians that they ought to take it before they got any lower.

That trend was exemplified even by the action of the Congress, where we note that ultimately the Congress failed to pay the tribes compensation in accordance with the principal of substitute or replacement value. The House of Representatives passed its version of HJA Resolution 33, that called for a case settlement of $17,105,000 for the taking of 156,000 acres of reservation land. This amount included $3 million from the Tribal Land Consolidation and Purchase Program. But, $12,600,000 was the settlement amount finally offered by the Congress after a conference committee between the two Houses. The Indians saw the proposed amounts being reduced, not only by representatives of the Corps, but also by the Congress, as the compensation measures moved through the Congress. And, so, of course they felt it was going nowhere but lower. This was a factor that affected their decision.

It did appear to the committee that the action of the Congress in lowering compensation rates from the studies carried on by the Corps was arbitrary.

The CHAIRMAN. Was any sort of appraisal made of the properties in question?

Mr. MURRY. There were types of appraisals that were made. We felt that they were terribly low.

The CHAIRMAN. Who made the appraisals?

Mr. MURRY. I believe it was done by the Corps or by contract through the Corps of Engineers. But, again, I'm speaking from a belief and recollection.

The CHAIRMAN. I'm just trying to figure out how much an acre?

Mr. MURRY. It varied, but I think many offers were around $12 an acre. We had some testimony that there were some types of land that were lower.

Mr. BLACKWELDER. Do you mean what the actual compensation paid amounted to? I think it was more like $10.

The CHAIRMAN. Is that correct, $10 an acre?

Mr. BLACKWELDER. We can give you the exact figure for the record, but I think it's in that neighborhood.

Mr. MURRY. That could be submitted later Mr. Chairman.

The CHAIRMAN. This is river bottom land?

Mr. BLACKWELDER. Yes.

The CHAIRMAN. Fertile land?

Mr. MURRY. Yes.

The CHAIRMAN. Irrigable land?

Mr. MURRY. Most of it, yes.

The CHAIRMAN. Crop producing land?

Mr. BLACKWELDER. Yes.

The CHAIRMAN. At $10 an acre?

Mr. MURRY. Easily irrigated, Mr. Chairman, because of low lift costs from the river.

The CHAIRMAN. This is getting very interesting. I shouldn't be the chairman of this committee, because I come from a State where we sell land by the square foot, and you can't buy land at $10 a square foot where I come from. So, when you tell me $10 an acre for irrigable, fertile land with crops growing on it——

Mr. MURRY. Mr. Chairman, of course some of this land was deliberately kept by the tribes in woodlands, because they desired it for both the timber, the logs for construction and so on. But, at any time a greater portion of the timber could have been removed for cropland or irrigation.

The CHAIRMAN. To the best of your knowledge, was the price provided anywhere near or resembling market value at that time?

Mr. MURRY. I, of course, was in the military during the period in which some of the negotiations took place, and was in college afterwards, but my recollection of land values in North Dakota during that period would have been from $35 on up for irrigable land.

The CHAIRMAN. Now, we find the Indians who used to be in a consolidated area sent to the upland and divided up into?

Mr. WALKER. Five segments.

The CHAIRMAN. Five segments?

Mr. WALKER. Yes.

The CHAIRMAN. What is the viability of irrigated agriculture in the State of North Dakota at this time?

Mr. MURRY. Are you referring, Mr. Chairman, to clearly irrigable irrigation lands on the reservations?

The CHAIRMAN. Yes.

Mr. MURRY. It is probably something like 40,000 acres that show real promise upon the Fort Berthold Reservation, with a possibility of additional acreage in excess of that. Final studies have not yet been made, nor has most of the land yet been certified by the Secretary of Interior, as irrigable, so we can't give you a final answer. Less work has been done, perhaps, on the total volume of irrigable lands on the Standing Rock Reservation. They have approval within the Garrison Reformulation Act for something approaching 3,000 acres of irrigation. If we take certain types of measures, the irrigable land might be as high as 105,000 acres at Standing Rock, but because of sale and engineering feasibilities and some other things, it probably turns out to be something less than that.

The CHAIRMAN. But even with irrigation——

Mr. MURRY. High cost, however.

The CHAIRMAN. Even with irrigation, considering the present economic plight of farmers, the economic benefits that may be accrued by the Indians, may be limited at best?

Mr. MURRY. I suspect, Mr. Chairman, it has limitations, although we looked at the factor that the cattle operations of Indian ranchers on the whole had to be radically reduced after losing the protected well watered bottom lands, the hay lands and so on. Irrigation might do much to stabilize and restore the potential of the ranching economy on the other more dry upland acres.

The CHAIRMAN. The prepared statement of the Department of Interior suggests that there is insufficient documentation to support this claim. Do you believe that there is sufficient documentation to justify the substitute or replacement value proposal?

Mr. MURRY. Mr. Chairman, we had two methods presented to us, and I believe you'll receive some information upon them. Basically, we did support at least the minimum. It depends upon your philosophy of how compensation should be adjusted when large blocks of land are taken. Huge tracts have far more impact than the taking of small individual tracts. Because it has a sweeping institutional impact, governmental impact and so on, we felt that the methods were rational and at the very least the one that resulted in the lower figure should be accepted. Yes; we did feel that the principal was valid, that the statistical input into the formula that was used was rational, and we did accept them.

The CHAIRMAN. In carrying out your responsibility in preparing your report, did you consult the Department of the Interior?

Mr. MURRY. By invitation we informed all the Departments of the ongoing study, and invited them to have representatives in attendance and to be present.

Mr. BLACKWELDER. Furthermore, Mr. Chairman, the Bureau of Indian Affairs provided staffing for the Advisory Committee. So, through the Bureau of Indian Affairs, Interior personnel were involved, I believe, in all of the deliberations and every single meeting.

The CHAIRMAN. Did the Interior Department tell you what they expected of you, as far as documentation was concerned?

Mr. MURRY. No; there were no directives from Interior as to how we were to proceed, or the level of evidence might be required to convince us.

The CHAIRMAN. So, as of this moment, you don't know what Interior requires of you?

Mr. MURRY. No; we weren't given that charge. We were given the charge to make a rational finding, as to the viability of the claims for compensation. We think we were reasonable people. The level of evidence presented to us, without any question, resulted in our determination that compensation had been inadequate and that claims and promises had not been kept. We felt the general compensation formula, which differs from the specific replacement recommendations that are contained in the report, was not an irrational approach, but rather a valid one.

Mr. BLACKWELDER. Mr. Chairman, for example, it's no secret how our method of figuring out what was owed was to figure out the economic loss to the income producing items. For example, at Standing Rock they lost 90 percent of the commercial timber. They lost fruits that were there, wildlife as well as the agricultural potential, as well as the direct damage to buildings and roads that were inundated. So, if you figure what just compensation at the time would have been, then invested with interest compounded to current levels, you come out with one of the figures we presented. Now, that's one way of approaching the situation, using the Government capitalization figures for 1950 and for 1959 when the two projects were under construction to obtain the initial just compensation figure.

The CHAIRMAN. If the Congress decides to accept and approve your recommendations and implement your recommendations, what will be the price tag?

Mr. BLACKWELDER. The two bounds for compensation for the Standing Rock Tribe, the estimates range from $181 million to $349 million, depending upon which methods of economic calculation are used, and for the Three Affiliated Tribes, between $178 and $411 million. So, a lower bound would be about $360 million and an upper bound would be about $760 million.

Mr. MURRY. Damage and compensation being somewhat a subjective thing and since economists who did work for us differ, we presented the range, but we did recommend at least the minimum.

The CHAIRMAN. I would assume that since you are members of the committee, that you support the findings of the committee without exception?

Mr. MURRY. It's signed by four of the five members. The fifth member did not sign the report because, I believe, of such frequent absences from participation, that he did not feel comfortable.

The CHAIRMAN. But, all of you sitting here approve?

Mr. MURRY. Yes.

Mr. BLACKWELDER. Yes.

Mr. WALKER. Yes.

The CHAIRMAN. Now, by supporting this, are you recommending that all costs associated with the report, the costs that you've just cited, be charged to the Garrison project?

Mr. MURRY. Mr. Chairman, I think if I could respond first. We believe that this is a Pick-Sloan cost. The total Pick-Sloan Program involves far more than the Garrison Water Diversion Project. It involves flood control. In fact, that was the thing that finally drove the wheels to begin the construction of the mainstream dams, with the 1943 floods on the Missouri. We believe it is a Pick-Sloan cost. If the Congress decided to use power revenues to pay these costs, that's within the discretion of the Congress. If you determine to use appropriated funds from the general fund of the United States, certainly we feel that's within the discretion of the Congress. We do not feel, however, that we should pick one aspect of a total basin-wide program and say that is a cost of only that aspect.

The CHAIRMAN. What you're just saying is that you recommend that the Congress not only seriously consider the recommendations, but implement them and as far as payment is concerned, it is up to the Congress?

Mr. MURRY. I believe the Congress has some sources. We also believe that the benefits basin-wide, especially in the lower basin states, have been substantial. Such things as revenue from the sale of preference power might be considered, but we're hesitant to suggest revenue-raising measures to the Congress.

Mr. BLACKWELDER. Furthermore, Mr. Chairman, it's not just the Garrison Dam itself that caused the damage, it was also the Oahe Reservoir that damaged the Standing Rock Tribe and the Garrison Dam that inundated the Three Affiliated Tribes land.

Mr. MURRY. Oahe is a South Dakota dam.

Mr. BLACKWELDER. So, there are two, actually there are two existing water projects that caused the major components of the damage.

The CHAIRMAN. Well, I thank you very much, gentlemen. And I can assure you that it's been extremely helpful.

Mr. MURRY. Thank you, sir.

Mr. BLACKWELDER. And, Mr. Chairman, if we could, we'll provide the exact dollar figure for the land from our report for the record.

The CHAIRMAN. I appreciate it sir.

Our next witness will be the Assistant Secretary for Indian Affairs of the Department of the Interior, the Honorable Ross Swimmer, and Brigadier Charles Dominy, Division Engineer of the Missouri River Diversion, Army Corps of Engineers. We are pleased to have you with us gentlemen. Please proceed.

STATEMENT OF HON. ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, FROM WASHINGTON, DC

Mr. SWIMMER. Thank you, Mr. Chairman. It's a pleasure for me to be here and I appreciate the indulgence of the committee, also on my behalf, in allowing me to present my statement toward the end. I have appropriation hearings later this week, so I need every minute I can get to work up that information.

We have, as has been explained to the committee, the report that was done at the request of Congress and the Garrison Diversion Unit Commission, which was, it's purpose of course, to study the project, particularly as it applied to the two Indian tribes at Fort Berthold and Standing Rock Reservations. The report addressed approximately 10 items that were of primary concern to the Garrison Diversion Unit Commission as it might effect Indians and, of course, to the Indians themselves.

We have prepared a statement for the committee that I would like to have submitted for the record.

The CHAIRMAN. Without objection, so ordered.

Mr. SWIMMER. I can briefly summarize that statement, I believe and save some time for the committee, and not have to go through it in its entirety.

Essentially what I'd like to say is, that we have a situation here that is not unlike that on many of our reservations across the country. The tribes that have been relocated, removed, transferred from one location to another, some as a result of actions taken through the development of the reservation system, some through natural disaster, some through development of water projects throughout the west, as is the case here. Invariably, the lifestyles of the tribes that are affected by those kinds of situations change. Often times we find that they change for the worse over the years. It's speculation to determine what might have been 30 years ago, but we know what is now, and we know that there are some very real, severe problems that are facing these tribes as well as many across the land.

The question is, what can we do about it? We have a couple of levels of responsibility. One is certainly a legal responsibility. I think this committee is very aware of that legal responsibility and on numerous occasions in the past has helped to promote legislation that would allow tribes to bring claims in court to assert the legal responsibility of the Government, and to collect damages. There is also a question as to a moral responsibility, perhaps. What is it worth to disrupt someone's lifestyle and what kind of price can we put on the conditions under which the people live. What could be done, perhaps to mitigate those conditions.

In these cases we know that there are some legal responsibilities. We're not clear about which ones have been satisfied. We know at the time of the development of this project, there was land that was taken, and tribes were relocated to higher ground in order to impound the waters, and that there was compensation paid for that. Perhaps fair market value and a little bit more, and I believe our colleague from the Corps of Engineers can get into the actual statistics on what that was and what the payment was at the time.

We also know that in further mitigation at the time, there were some schools built, there were some clinics provided, there were some access provided to health providers through a card system, where the Indian people would have access to health care. We also know that the lifestyle, the economic lifestyle of the tribe was interrupted. They were traditionally located in the valley and they lived on subsistence, hunted and fished and were pretty well able to take care of themselves, and that of course, that lifestyle changed, and that due to the new conditions that faced them on the higer plains areas, they have not been able to replicate that subsistence lifestyle as they could before.

I believe that there is definitely, as has been provided for in the Garrison Reformulation Plan, some opportunity to add additional land to irrigation that could provide some economic benefit to the tribe and that the water should be applied where appropriate to the land and allow the tribe to carry on an agricultural operation. In the report, the Commission has indicated that an additional sizeable chunk of land, 130,000 plus acres, could be added to irrigation, possibly on the basis that it's irrigable. I also note though, that there are a lot of other concerns registered there as far as what happens to the drainage water. It's not the best land in the world for sure, as far as agriculture, and that it could create some problems downstream as the drains work. We've seen that happen in the west quite a bit.

The other thing I am a little concerned about, although it's not addressed directly, is the feasibility of an agricultural program, a large project like that, in this particular area. Well, if we say that that's not maybe the best way to go, then we have look at other ways of trying to provide some jobs in that area, and then we're talking about industry and, what I would suggest is that maybe some alternatives to looking at massive irrigation systems would be through the reformulation project, look at maybe some of that money to be used for trust funds, or a way in which it could be used as a economic development fund. It could, perhaps, recruit some private sector jobs through manufacturing or assembly work, or other kinds of high technology work, whatever might be in the marketplace in order to provide jobs for the people that are on the reservation.

I think there have obviously been a lot of concerns about the compensation that was paid at the time, and we have some studies that have been done in the Commission's report. A couple of statements that concerns me in the report, those included on item 9, the additional compensation. The Commission apparently turned over to the tribes the opportunity to determine what, if any, additional compensation might be needed, and the tribes chose to hire an economic expert to do an economic analysis of the conditions of the tribe both then and presently. They make a statement on page 53 of the report that says, the tribes were not compensated anywhere near the amount that the tribal land was worth. I don't think that's a defendable statement, as I believe our colleague from the Corps will get into, but, nor do I believe that that was a basis for their economic analysis here. They really weren't talking about land values, they were talking about an economic loss that has occurred as a result of a change in lifestyle.

My concern about that and whether or not it's something that can be documented is that, I'm not sure that even if we can do an economic analysis on an Indian tribe in any situation today and try to compare it to where they would have been 30 years ago, that it would be a compensable loss. One of the recommendations I would suggest is that, if the committee determines that there in fact was inadequate compensation, actual compensation paid the tribe at the time of the taking of the lands, that it's an issue that really should be looked at in the context of litigation. And, that both parties should be able to determine through the appropriate experts whether it's compensable, what amount would be compensable in addition to what was paid, and that a judgment could be rendered against the United States for whatever that money might be. That's traditionally, of course, the way that we have approached these kinds of cases.

But, I really cannot argue with the Commission's findings. I would say that under most situations, an economic analysis could certainly come up with this kind of a finding, that we're facing somewhere between, I'm not sure, it's $100 million to $300 million worth of economic loss to the tribe. So, I just throw that out as an addition to what the Commission has done. That it may require another forum, but of course, it also does provide the Congress with an opportunity to look at what that economic loss has been, or what it's been projected to be anyway, by the economists.

With that, I think it would be instructive to get into, perhaps, some of the numbers that the Corps has, and let them explain their actions at the time of taking and what they did to pay for the property and mitigate the conditions of the tribe and I would be happy to get into questions that I'm sure the committee has by now, after listening to other testimony.

[Prepared statement of Mr. Swimmer appears in the appendix.]

The **Chairman**. General Dominy, welcome, sir.

STATEMENT OF BRIG. GEN. CHARLES E. DOMINY, DIVISION ENGINEER, MISSOURI RIVER DIVERSION, ARMY CORPS OF ENGINEERS, FROM OMAHA, NE

General **Dominy**. Mr. Chairman, I'm pleased to be with you today. I'm General Charles Dominy. I'm the Division Engineer of the Missouri River Division of the U.S. Army Corps of Engineers, stationed in Omaha, NE.

I will summarize our preliminary comments on items of direct interest to the Corps of Engineers. Our review of this report has not been completed as of yet, and I would ask your indulgence, if maybe within 30 days we could submit to the committees, additional comments for the record.

The **Chairman**. Fine, sir. Could you by any chance make it in 2 weeks?

General **Dominy**. We'd be glad to do that.

The **Chairman**. Fine, sir.

General **Dominy**. Fine. It will be 2 weeks.

As background, the Flood Control Act of 1944 authorized the construction of five dams and reservoirs along the main stem of the Missouri River pursuant to the Pick-Sloan Plan. As certain Indian reservations adjacent to the projects would lose land to flooding by the reservoirs, Congress authorized the acquisition of such lands and specified the compensation to be paid to the affected tribes and individual Indians. There are two laws of direct relevance to the matter at hand. One is Public Law 81-437 of October 29, 1949, by which the United States acquired lands of the Fort Berthold Reservation for the Garrison Project in North Dakota. The other is Public Law 85-915 of September 2, 1958, by which the United States acquired lands of the Standing Rock Sioux Tribe for the Oahe project in North and South Dakota. Both laws specified the compensation to be paid, and both laws completely extinguished the Indian interests in the affected properties, except for grazing privileges and mineral interests retained by the Standing Rock Sioux Tribe on their former reservation lands. In 1962, grazing privileges were restored to the Three Affiliated Tribes in accordance with Public Law 87-695. And in 1984, by Public Law 98-602, Congress restored the mineral rights of the Three Affiliated Tribes in the acquired lands of the Fort Berthold Reservation.

The Army Corps of Engineers manages the project lands acquired from these tribes as well as other project lands acquired from Indians and non-Indians pursuant to the Flood Control Act of 1944. We do it for the following purposes: flood control, hydropower operations, irrigation, navigation, recreation, and wildlife preservation.

We did not have an opportunity to participate in the preparation of the report by the Joint Tribal Advisory Committee. However, based on our preliminary review of the final report, we believe that a number of the recommendations have merit and we will work with the tribes to implement those. Others, though, would be difficult to implement under our existing authorities and mandates, and their economic feasibility has not been established.

The committee recommends return of excess lands to the tribes. We recently reviewed our landholding at both the Oahe and Garrison projects to ascertain whether we held land in excess of project needs. Considering the full array of project purposes and the need for a buffer for wave action and shoreline erosion, we concluded that there are no lands within the Corps project boundaries which are excess to authorized project needs.

The committee noted that there is considerable potential for recreation development and recommends additional recreation development by the tribes. The Corps of Engineers is and has been willing to participate with the tribes in recreation leases and in development of recreation opportunities, as it does with other local entities, pursuant to Federal law and consistent with budget priorities.

Currently, we have four outstanding leases with the Three Affiliated Tribes for recreation purposes, as well as many recreation leases with other local non-Indian entities. Section 1125 of Public Law 99-662 transfers to the Three Affiliated Tribes the Four Bears Recreation Area at Lake Sakakawea which was developed at full Federal expense.

Among the other items that the committee deems important is the establishment of an "Indian Desk" within the Corps. We currently have an internal organizational capability to provide special emphasis on Indian affairs and will give this recommendation further consideration. Of course, the Joint Tribal Advisory Committee and other representatives of the tribes are always welcome to visit our Omaha District, to visit the Missouri River Division, or to visit the Chief Engineer's Office here in Washington to discuss issues of mutual concern.

Another item of importance to the committee was protection of the tribes hunting and fishing rights. As I already mentioned, there are no excess lands within the Corps' project boundaries. Because of this and because of the Corps' responsibilities to provide fish and wildlife recreation for general public use, the opportunities to modify jurisdictional prerogatives of the tribes would be limited at best. However, we're willing to coordinate with the tribes to address hunting and fishing issues and other fish and wildlife concerns.

Mr. Chairman, that concludes my statement.

[Prepared statement of General Dominy appears in the appendix.]

The CHAIRMAN. I thank you very much, gentlemen.

The 1944 Act authorized the construction of the Garrison and the Standing Rock projects, and provide authority to acquire necessary lands and to provide appropriate compensation. When did you begin the studies on these two projects? As a member of the Public Works Subcommittee, so I know that it takes time for your engineering studies and feasibility studies, and that before you come to us for authorization, there are steps your must complete. When did you begin this quest for the project?

General DOMINY. Well, Mr. Chairman, prior to the Flood Control Act of 1944, studies had been underway throughout the main stem of the Missouri River focusing on flood control and navigation issues. So, it goes back many years prior to the authorization that occurred in 1944.

The CHAIRMAN. If I'm correct, during all that time, let's say from the thirties, early forties, the Government of the United States, through its agent, the Corps of Engineers, proceeded with the planning and such never taking into consideration the concerns of the Indians. We just decided this is going to be it. Isn't that correct?

General DOMINY. Mr. Chairman, I think we looked at it from the technical perspective of what flood control measures would be effective in that region. And then you take those next steps and work with appropriate elements, in this case the Bureau of Indian Affairs. But initially, from our perspective, our responsibility was to do a study for technical feasibility of an engineering solution to a problem.

The CHAIRMAN. So, you came up with a report that said the dams will be built here and then you looked at the map and yousaid, oh, my God, we've got Indians living there. Up until then we did not confer with the Indians. I'm not trying to be facetious, but isn't that correct?

General DOMINY. Sir, I'm not sure.

The CHAIRMAN. I looked over the reports and there's nothing to indicate that the Indians were called in for discussions and consultations to determine whether this would be all right with them, so I'm just assuming that this was done. Although, that's not the practice today, at least. If they were going to build a dam and my home happened to be in the valley, before it would get to the Congress the Corps would visit me. That's the practice today, isn't it?

General Dominy. Yes; there's lots of public dialog on any potential project, indeed.

The Chairman. But that public dialog did not occur at that time. So, we have a situation where officials of the Government of the United States were visiting this area with their measuring devices and such, and comes 1944, the technical requirements have been submitted to Congress, the appropriate committees approve passage and bingo, we've got a 1944 act. The Indians are still not consulted, and then we move ahead, and we tell the Indians we're going to build this year and let's negotiate. And in the negotiation the Indians are horrified, they're concerned to see their sacred burial grounds, their traditional hunting areas, their traditional residences targeted for flooding and so they oppose this plan. Then the Corps comes in and says, well, if you don't want to negotiate we're going to condemn this place. And then you proceed even before the papers are signed or the agreements are concluded to begin construction. Isn't that correct?

General Dominy. Yes, Mr. Chairman.

The Chairman. You weren't there, and I'm not blaming you. This was a long time ago. None of us were there. But, do you think that's the way we should have done our business?

General Dominy. Mr. Chairman, once the Congress has authorized and appropriated funds to move on a specific flood control project, it's not uncommon for much of the real estate activities associated with that to take place several years following the initiation of construction of the dam.

The Chairman. You mean to tell me that even today if my property were in that valley, that you'd come in with your bulldozers and start digging trenches on my property?

General Dominy. The axis of the dam and the area around the——

The Chairman. I'd have the Marshals on you. I'd have the Congress on you. I'd have everyone on you. And you know that would happen.

General Dominy. Yes.

The Chairman. Then here are these Indians, who can still recall the history of the United States, where they've been pushed around, suddenly being confronted with a situation where they realize that maybe if you don't take this, you'll end up getting nothing. Then the Congress gets into the act, one stage at $17 million, and then it comes down to $12 million, the present amount today. If I were a chief at that time, and I say, fellows, it is $12 million now, let's grab it because next year it is going to be $10 million, and who knows, 2 years from now it will be $8 million. My question is just the matter of the ethics involved. Do you think that is the way Americans should have conducted themselves in dealing with Indians?

General Dominy. Mr. Chairman, the legislative history and the negotiation history for this one has been laid out very clearly, and I think there's evidence that there's a great deal of unhappiness and a difficult situation for the parties concerned.

The CHAIRMAN. Do you oppose the recommendation of the Joint Committee?

General DOMINY. Mr. Chairman, as I outlined in my opening statement, there are elements of the report that could be accomodated within the existing authorities; for example, working together on potential recreation and on fish and wildlife issues. For those recommendations that are within existing authorities, we want to open that dialog and continue to work with them.

The CHAIRMAN. Now, the compensation which was provided for the record, has been calculated that for Fort Berthold, 156,000 acres, it comes out to approximately $24 an acre, and for Standing Rock with 56,000 acres, it comes down to about $35 an acre. Was that appropriate compensation?

General DOMINY. Mr. Chairman, if you——

The CHAIRMAN. I'm not in a position to decide whether it's appropriate or not, because if I apply my experience from Hawaii, I would say that this was not even robbery. It was murder. But, was it fair at that time?

General DOMINY. I think the record would reflect that the method of real estate acquisition used at that time is very similar to that use today, where contracted real estate personnel survey and use fair market value determinations to come up with the appraised amount negotiations with the landholders. In this particular case, the final compensation legislated by the Congress had funds far in excess of the land value appraisal, because you recognized the other tangible and intangible sacrifices associated with this move. But, if you looked at non-Indian land owners, who also had lands, many of them went to condemnation because they also did not want to lose their ranches or parts of their lands that were in these good areas. You'll find that the appraised value system was used uniformly within the basin.

The CHAIRMAN. I have looked over, in preparing for this hearing, the methods of compensating that have been employed by the Corps of Engineers in their negotiations. One common way of compensation, if you're taking over properties owned by a community or by local government, is that you share in the revenue that is derived from this project. Now, this one here has a lot of benefits accuring to other people, land values have gone up, electricity provided. But, now were're charging the Indians electricity. Was there any sort of sharing of revenues with the Indians in this case?

General DOMINY. Mr. Chairman, I'm not aware of any, and I will look with my staff to see if there are some details that would help flush that out in the record, but I know of none.

The CHAIRMAN. There wasn't any.

Would it be too late to open up the agreement again?

General DOMINY. Mr. Chairman, I would yield to my colleague from the Bureau of Indian Affairs on such a question.

The CHAIRMAN. Now, you indicated that there are no excess lands and the Joint Committee maintains very strongly that there are lands excess to your needs.

General DOMINY. That gets into the question, Mr. Chairman, of the——

The CHAIRMAN. Are they being used at this time?

General DOMINY. Yes; they are. When I outlined the series of project purposes, one of those was wildlife management.

The CHAIRMAN. Wildlife management?

General DOMINY. Yes, sir.

The CHAIRMAN. Why don't you let the Indians do the wildlife management? They've been doing this for eons.

General DOMINY. Mr. Chairman, the Congress has charged us to do that and we have taken on that responsibility.

The CHAIRMAN. Now, if we took that responsibility away, that's OK with you?

General DOMINY. Mr. Chairman, you are in charge.

The CHAIRMAN. Now, Secretary Swimmer, you suggested that there are alternatives to irrigation development that might yield a better return. What are these alternatives that you speak of?

Mr. SWIMMER. Simply a different way of using the money that otherwise would be invested in irrigation pipes and sprinkler systems and pumps and pumping stations and the O&M that would be paid each year to run those things. If the economics of it were such that they could not grow crops in that area that are marketable at a profit, it would be of concern to me as to whether we should make that kind of capital investment, or that if we're going to make an investment, it was provided in the reformulation authorization of something like $67 million. That, if that money or additional moneys were used more as a venture capital pool or an investment pool for the tribes, that or instead of going with the 135,000 acres, the money could be used more effectively, perhaps and, actually put more people to work. Farming does not employ a great deal of people, particularly in today's mechanized way of farming. We have explored this with other tribes throughout the west that we are negotiating agreements for.

The CHAIRMAN. Have you explored this with the tribes in question?

Mr. SWIMMER. As far as I know, except in a very general way, we have not discussed this with these particular tribes.

The CHAIRMAN. Don't you think that as the senior trustee for the native Americans in the United States, that it would be well if you consulted with the Indians?

Mr. SWIMMER. Well, I certainly do. And I certainly have attempted to consult with them and I have talked to these tribes. I am not in a position to recommend to the tribes that this is not a good way of spending the money. The Congress has already authorized it and I'm not prepared to go to the tribe and tell them not to do it. I'm simply suggesting that they apparently do have a lot of abilities themselves and I am suggesting that as we looked at the report, that there might be other things for the tribes to consider.

I would be more than happy to sit down with the tribes and will do so, to look at alternatives to the way they are proposing. The other issue involves water quantification and we generally do not commence either negotiations or proposed litigation until the parties have advised us that they would like to do so.

What I was going to suggest as another alternative, is the concept of water marketing. I don't think in this area, we have a scarce supply of water, however, and so it might not be as effective as elsewhere. But, I think that as we look at the issues of economic development, these tribes are certainly going to be included in those discussions and would hope that we can help them provide some analysis as to the best way to spend the money.

The CHAIRMAN. You have suggested in your statement that the tribes should be allowed to lease, as grazing rights from those lands along the shore, now, which the Corps says are not in excess. If these lands are not in excess and important to the project, how can you provide grazing? It has to be either important for the project or not important for the project.

Mr. SWIMMER. My impression of the Corps statement was that they could not turn title over to these lands.

The CHAIRMAN. They said they have use for it. It's part of the project. If it's part of the project, how can you permit animals to go roaming around there and grazing?

Mr. SWIMMER. They already have. They have afforded the tribes the exclusive right to graze on those excess lands that are not excess, but those lands——

The CHAIRMAN. So, you believe they're excess also.

Mr. SWIMMER. I guess I've lived too long around the Corps. The lands are not excess in the context of the Corps use of those lands to protect the shore of the project and I'm paraphrasing what our colleague has said here. My concern is, that if the land is dry and is growing grass on it, you ought to be able to graze cattle on it, and it was an exclusive right to the tribes to do that and because there is a technical legal issue as to whether that right is leasable, we have said that they couldn't lease it. I don't really think that would be a problem to the Corps, although I haven't conferred with them.

The CHAIRMAN. Then you would suggest legislation to permit this?

Mr. SWIMMER. I would, if it's needed. I think that it would be fair, but again, I would defer to the Corps. If they feel like keeping someone else's cattle off besides the tribes' cattle, would be a problem then——

The CHAIRMAN. When do you plan to initiate the action that you are willing to take—administrative steps to coordinate fish and wildlife and law enforcement projects with the Standing Rock Sioux Tribe to protect the tribe's hunting and fishing rights on the reservation in and around the Lake Oahe?

Mr. SWIMMER. Well, I would be prepared to do that at any time when the tribes would like to sit down and talk about it, and I'll be happy to arrange a meeting with Fish and Wildlife folks from our Department to do that. I'm not sure exactly what the consequences of that might be.

The CHAIRMAN. Do we have representatives of the Standing Rock Sioux Tribe here?

Mr. WHITE LIGHTNING. Yes, sir.

The CHAIRMAN. Do you desire to sit with Secretary Swimmer to discuss this?

Mr. WHITE LIGHTNING. Well, the discussion that they're proposing if it's held like——

The CHAIRMAN. Will you identify yourself, sir?

Mr. WHITE LIGHTNING. Yes, sir; my name is Al White Lightning, and I'm from the Tribal Council of the Standing Rock Sioux Tribe.

We went to Secretary Swimmer on December 18, to make a proposal to him. At the time, Secretary Swimmer laughed at us and since then we didn't go to him. If this is going to be another issue where he laughs in our face, then I'm not interested.

The **CHAIRMAN**. That's a rather serious charge, Mr. Secretary.

Mr. **SWIMMER**. Well, it is. And, I think it's a very unfair characterization of the meeting that we had. I don't remember the exact date of December 18, apparently it made an impression on the gentleman's mind. I have, to my knowledge, never laughed at a tribe that has presented anything seriously. I recall visiting with the tribe concerning the report and that my response was that a report that essentially provides for a list of items to be compensated that would cost between $500 and $1 billion is not something that we're going to get the administration to support in this particular budget area. And that we hadn't had time to do much of an analysis on the report, but I was concerned particularly about the large items of additional compensation and the way in which the economic report was done.

I don't recall any discussion occurring about their desire to meet on fish and wildlife issues. As I said, I'd be more than happy to sit down with them, but I think to characterize the meeting as saying that I laughed at the tribe, is simply not true. And, I would have to take exception to the gentleman's statement. If he believes that happened, I apologize to him here.

The **CHAIRMAN**. Well, I think we should start from the beginning again, and forget about what happened in the past. You are prepared to meet with the appropriate officials of Standing Rock Indian Tribe?

Mr. **SWIMMER**. Certainly. Certainly. And I would have the other officials in the Department available to meet to discuss the issue and would invite the Corps' representative, if it's going to effect wildlife that's within their jurisdiction.

The **CHAIRMAN**. We will notify the officials of the Standing Rock Sioux Tribe of your willingness to meet, and would you provide this committee with a report on these meetings?

Mr. **SWIMMER**. Sure.

The **CHAIRMAN**. It would also help if I could send staff people from this committee to sit in.

Mr. **SWIMMER**. Certainly. They'd be welcome.

The **CHAIRMAN**. Do you have any comment to make on the line of questioning I had with the General, as to whether the methods employed in acquiring these lands were done in an American ethical way?

Mr. **SWIMMER**. Mr. Chairman, I don't think that the methods generally used by the Government to acquire properties for any project are done any differently, whether it's an Indian tribe or a non-Indian. I would say that in the recent history, we have made a lot of progress, however, in attempting to make the public aware of what is being done.

The **CHAIRMAN**. Do you mean to tell me that the Corps of Engineers or a Government agency before concluding an agreement can come on my property and start digging trenches?

Mr. **SWIMMER**. I don't think that's what was alluded to. The gentleman said that the dam in fact could be built. Someone downstream from that dam, the Government does have the ability to condemn that land. And they have done it. They've done it to my tribe, and they've done it probably to——

The CHAIRMAN. They can condemn it, but that's part of the threatening posture that one takes. But, they did one step further. They began the construction.

Mr. SWIMMER. Of the dam.

The CHAIRMAN. Before the agreement was signed. Do you think that's proper, or do you think they can get away by doing that on my property?

Mr. SWIMMER. I think it has something to do with the congressional action in that they were trying to follow the law, at least that's generally what is used——

The CHAIRMAN. Well, I'm not blaming the Corps, because I'm certain they took orders from someone, whether they came from the Pentagon or from the Congress. But, I just want to know if you think that's proper.

Mr. SWIMMER. No.

The CHAIRMAN. So, you don't think that it was a proper way to do business then?

Mr. SWIMMER. Well, I don't think it's proper to build a project if the public doesn't know that it's being built. And if that happened, it certainly wouldn't be proper. I understand the dam was being built not on tribal land, but it certainly would have an effect on it, and I think in today's situation we would certainly go to the tribe and spend a great deal of time working with the tribe both before and while the dam is being built. We recently went through a long history of one known as Tellico that the Eastern Band of the Cherokee Tribe had a great deal of interest in, because it was going to flood some very important lands of that tribe, and in spite of years and years and years of discussion, the dam was built. And it did flood the land. So, I think that the tribes as well as individuals need to be aware of the action that's being taken and have every recourse to address it. In the end, the Government is going to take and the Government should provide compensation when it does.

The CHAIRMAN. Well, each day I learn a bit more about our relationship with the Indians, and what I learn is not always pleasant. I don't know what the practice of this Government or the Corps was in 1944 or 1941, but as long as I've been here as a member of the U.S. Congress, whenever a project like this is being considered they have public hearings.

Mr. SWIMMER. Sure.

The CHAIRMAN. They call in the interested parties, the property owners. But here we have a situation where the Congress passes an Act, the Indians are not consulted, the negotiations begin and before it's concluded, bulldozers come in.

Mr. SWIMMER. Certainly the process has been improved greatly over what it was in the early part of the century.

The CHAIRMAN. Don't you think we should do something to redress that, or do we just say it happened yesterday, so let's forget about it? Yesterday was yesterday.

Mr. SWIMMER. It's very difficult to put a value on that and to address it monetarily or to address it some other way, I can't answer the question. There have been many tragic situations occurring in

Indian country. My tribe has had many of them and to try and address what happened at that particular time in our history and as time goes on, it's difficult to put it in terms of dollars and cents. It's difficult to say what would have been. If the tribe had remained on subsistence, what would have been today.

The CHAIRMAN. Well, I concur with you. It's difficult to translate these concerns into dollars and cents. But, before we even attempt to translate these concerns into dollars and cents, I think we must take the first step. The first step is to ask did we do the right thing. If we did the right thing, then we don't need the dollars and cents. But, if you and I agree that what we did was not quite American, not quite ethical and not quite moral, then it's a different ball game.

Mr. SWIMMER. I have had many people suggest that we should go back and revisit a lot of the water projects that were built. Whether they were immoral projects, I can't really say. Some of them probably aren't needed in retrospect. Some of them have prevented a lot of floods that would have killed a lot of people. And, whether the right thing was done at that time or not by the Indians or by other people, again is speculation. And, to go back and revisit it and to say that in retrospect certainly it was not—I don't think it was intended that it was going to benefit the Indians. I wouldn't think so anyway, that this project would assist them, and apparently there was an attempt at the time to provide some compensation not only for the value of the reservation, but to help them relocate. And, if there are other things that we can do and the reformulation has provided some of the things, such as irrigation, then that should be considered as further mitigation of the issue.

The CHAIRMAN. Well, I thank you very much, Mr. Secretary and thank you, General.

On behalf of the members of the committee, I wish to tell you that were it not for the Highway bill that is now pending on the Senate floor, most of the members would be here, but as you know, Senator Burdick is chairman of the committee that has responsibility for that bill and he has an obligation to be there. So, in his behalf, I'd like to submit for your consideration, study and response several questions relating to this problem and some to you, sir, General.

General DOMINY. Yes, Mr. Chairman.

The CHAIRMAN. I thank you very much.

General DOMINY. Thank you.

The CHAIRMAN. I'd like to now call upon Mr. Ed Lone Fight, Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, New Town, ND.

And I gather, Mr. Chairman, you will have Mr. Cross, your tribal attorney accompany you?

Mr. LONE FIGHT. That's right, Mr. Chairman.

The CHAIRMAN. And Mr. Gorman and Mr. Nathanson and Mr. Bilstein?

Mr. LONE FIGHT. That's correct.

The CHAIRMAN. Will you introduce them, sir?

Mr. LONE FIGHT. Yes; to my left is Mr. Cross, he's our Tribal Attorney, and also a member of the Three Affiliated Tribes. And to my right I have Dr. Gorman, and Dr. Gorman is the agricultural economist, and also I have Dr. Friesema, a sociologist and a political scientist. And, also I have Mr. Ron Bilstein, engineer and consultant.

The CHAIRMAN. Well, gentlemen, please proceed.

STATEMENT OF HON. EDWARD LONE FIGHT, CHAIRMAN OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD INDIAN RESERVATION

Mr. LONE FIGHT. Thank you very much.

Mr. Chairman Inouye, my name is Ed Lone Fight, as you mentioned. I'm the chairman of the Three Affiliated Tribes. And it is my pleasure to appear before your committee and the other committees represented here and testify regarding the report issued by the Joint Tribal Advisory Committee on May 23, 1986.

You have heard many testimony including Mr. C. Emerson Murry, and his colleagues, who served on the Joint Tribal Advisory Committee. That Federal commission has issued a thoughtful and considerate report regarding the impacts of the Pick-Sloan Program on the Three Affiliated Tribes of the Fort Berthold Indian Reservation. You have seen the video presentation showing in stark terms of the human costs associated with the removal and dispersion of the tribal people in order to make way for the Garrison Dam.

This Federal removal of some 480 tribal families, over 90 percent of the tribal population in the 1950's from the five bottom land communities along the Missouri River has had disastrous and lasting adverse consequences for the Three Affiliated Tribes. This result should come as no surprise. It would come as no surprise to the Missouri River Basin investigation team, the Federal task that through its experts in 1946 and 1947 evaluated the feasibility of the removal of the Three Affiliated Tribes in order to make way for the Garrison Dam. That agency's 30 some reports on the subject makes clear the hazards to the future tribal well-being if such a policy were adopted. It would come as no surprise, and it didn't, to the tribal leaders who foresaw the devastating consequences that would befall their people if they were forced to remove. These tribal leaders' moving and emotional laden speeches in opposition to the injustice of the Garrison Dam are commemorated now among the other great speeches in Indian history. Finally, it would come as no surprise to the Bureau of Indian Affairs, it commiserated with the tribal people over their fate, but did very little else. The BIA's message to the tribal people was: reconcile yourself to the coming of the dam, your removal is inevitable.

However, the Three Affiliated Tribes did not view their removal as inevitable. As the MRBI reports, and other scholarly studies, who the tribes, unlike the other Great Plains Tribes, were a village of agricultural people that had succeeded by the 1940's in building a self-sufficient tribal economy on Fort Berthold. The bottom lands of the Fort Berthold Reservation, according to the MBBI reports done near the time of the taking act, abounded in natural resources. The naturally fertile alluvial soils, the natural shelter for the tribes' livestock herds, the abundant deposits of coal, the standing timber, the availability of seasonal fruits such as juneberries and choke cherries, the extensive habitat for wild game, as well as a plentiful supply of good water for domestic and stock watering purposes, all combined to provide a solid economic base that sustained the tribes virtually independent of the non-Indian economy around them. The tribal people for the most part, according to the MRBI reports, through a tradition of self-reliance and hard work produced an income from their lands that made them economically self-sufficient. Those bottom lands were characterized by MRBI as constituting a natural factory that provided for the present and future self-sufficiency of the Three Affiliated Tribes as was contemplated by treaties between themselves and the United States.

The basis for the tribes' objection to their removal is as simple as it is direct and persuasive. There was no place for them to remove to. The Garrison Dam would flood the last remaining bottom lands on the reservation. Congress initially agreed with the tribes. They would not have to remove unless a suitable replacement reservation was offered to them. Congress, in the 1947 War Department's Civil Appropriations Act, prohibited that agency from proceeding with the construction of the Garrison Dam. Construction was prohibited until the War Department offered under statutory terms, lands of sufficient quality and quantity to provide a permanent homeland for the tribes in exchange for their economic and social base that was to be taken as a site for the Garrison Dam. The Secretary of the Interior read section 6 of that statute as requiring the Federal Government to compensate the tribes for "a replacement cost basis." This means that the Federal Government was required to replicate not only the land base, but the infrastructure necessary to the continued existence of Fort Berthold as an agricultural reservation, as was contemplated by Federal treaty and statute.

If the statutory purpose and intent of section 6 had been achieved the tribes would not be here today. However, the Secretary of War failed to find suitable replacement lands that met the statutory mandate. The War Department then persuaded Congress to eliminate the Indian clause limitation on the construction of the Garrison Dam. Congress, recognizing that a replacement reservation could not be provided, undertook to provide a cash equivalent of the economic and social base that accorded with the same standard of substitute or replacement value. The MRBI reports had already described in depth and detail the complex and costly rebuilding and rehabilitation program that would be necessary if the tribal people were removed and they had to rebuild their tribal economic and cultural life from square one.

Let me emphasize here that the tribes no longer had any choice but to remove. The only issues open for the discussion with the Corps of Engineers was the timing and the circumstances of that removal. Virtually no attention was paid to the MRBI recommendations regarding the steps the Federal Government had to take to ensure that the tribes were successfully reestablished on the high plains of the residual reservation.

Congress, recognizing that a replacement reservation could not be provided, undertook to provide the tribes with the cash equivalent of their economic base which accorded with the same standard of substitute or replacement compensation. The Congressional intent in Public Law 81-437, the Taking Act, to accord the tribes full indemnity value, as against mere fair market value for the taking of their treaty protected economic base is clearly reflected in the legislative history of that statute. Congress recognizing that the payment of fair market value, as if the tribes were made private condemnees, would neither adequately compensate the tribes nor enable them to continue as a self-sufficient treaty protected tribal government. This recognition is based expressly on the Federal reports indicating that the residual lands of the reservation would be insufficient to support the existing ranching and farming industry of the tribes.

Ultimately, however, Congress because of budgetary constraints failed to pay the tribes compensation that accorded with the principle of substitute, or replacement valuation. For example, the House of Representatives reported out its version of H.J. Res. 33, that called for a payment of $17,105,625. This amount was acknowledged by the House as falling below the standard of replacement valuation to the tribes. But $12.6 million was the amount that was offered by Congress, after final conference between the two Houses, to the tribes on a "take it or leave it basis," of compensation. The tribes, aware that they were to be removed in any event, and likely felt destitute, reluctantly accepted the terms of the settlement imposed by Public Law 81-437 on March 15, 1950.

The tribes were to be permanently reestablished at the expense of the Federal Government, pursuant to sections 2(b) and (c) of Public Law 81-437 on the residual lands of the reservation. The reconstruction of the tribes' economic and community life was to be assumed as a direct statutory responsibility. The reestablishment program had three aspects. No. 1, the reestablishment of the tribes' real and personal property on the lands of the residual reservation. No. 2, the reestablishment of the tribal cemeteries, shrines, and monuments. No. 3, the reestablishment of tribal buildings and facilities. The Commissioner of Indian Affairs was directed by the statute to carry out the removal and relocation of the tribes pursuant to a plan that was consistent with the purposes of the statute.

However, as a matter of fact, the official responsibility for developing and executing the removal plan fell on Mr. Rex W. Quinn, the agency superintendent at the time. Quinn had a short time in which to develop and execute the removal plan. The gates of the Garrison Dam were to close in early 1953. Remember, Mr. Chairman, that the construction of the Garrison Dam by 1951, was well underway. Superintendent Quinn, in his 1951 plan, recognizes, as did the MRBI team, that the permanent reestablishment, absent a costly and complex rehabilitation program, of tribal members on the lands of the residual reservation was not possible. He candidly acknowledged that the residual lands were not of sufficient quality or quantity to support the replacement of the livestock and ranching industry, the main stay of the tribal economy on the historic reservation. Quinn, therefore directed his staff to counsel those tribal members that were young enough, and willing to do so, to relocate off the reservation, in urban areas under the BIA's new employment relocation program. Quinn suggested that this approach may be consistent with the policy of termination of the reservations advocated by some in the Federal Government.

As a practical matter, relocation under Quinn's plan meant the removal of tribal families to new home sites on the residual reservation. However, the lack of cheap available and good groundwater, as pointed out by the MRBI team, greatly limited the success of this endeavor. Further, the tribal members were unable to utilize the residual lands for agricultural purposes without large capital investment, new equipment and training that would allow them to adapt to the new agricultural environment. Additionally, the economic utilization of the fragmented heirship lands on the residual reservation would be impossible. Quinn recognized that without a federally funded tribal land consolidation or new purchase program, the removal efforts were doomed.

Tribal efforts to utilize a portion of the $7.5 million, payable to the tribes as compensation for economic recovery purposes, such as land consolidation, were frustrated by the Federal policies at the time. The tribal proposals for economic development were rejected by the BIA unless the tribes were willing to accept termination, the end of their Federal wardship status, as a condition for the use of tribal moneys for that purpose.

Some tribal members also opposed tribal utilization of those funds for economic development on the reservation. Those members both desired and needed those funds for their existence. Those tribal funds, some $7.5 million plus 4 percent accumulated interest, were all paid out to tribal members on a per capita basis by 1955. A small amount, about $200,000, was retained for tribal administration purposes. Those per capita payments were generally spent by tribal members to pay for current living expenses. Very little of that money was reinvested in durable goods or land.

Let me summarize the major points of the complex legal and social history of the removal of the Three Affiliated Tribes. No. 1, Congress recognized from the outset, through, "lieu lands" mandate to the War Department, that the Three Affiliated Tribes were entitled to the replacement or substitute value of their economic base as a basis for just compensation. No. 2, Congress realizing that a suitable replacement reservation could not be provided to the tribes, undertook to provide the tribes with the cash equivalent of their economic and social base on a principal of substitute or replacement value. No. 3, Congress because of budgetary and other pressures, failed to accord the tribes this standard of compensation under the terms of the settlement act, Public Law 81-437. No. 4, the Three Affiliated Tribes' proposals to utilize the $7.5 million, payable to the tribes as compensation for economic recovery purposes were frustrated by the Bureau of Indian Affairs policies at the time. All of the funds were expended by way of per capita payments to tribal members to meet their living expenses. No. 5, the Bureau of Indian Affairs was unable to meet the statutory mandate of reestablishing tribal people on the residual reservation lands because those lands could not support that population and sufficient funding was not available to reestablish those persons removed.

The JTAC's recommendations regarding just compensation, replacement of lost infrastructure, and the limited development of the irrigation potential of the reservation, if technically and economically feasible, lay the basis for a genuine and sound tribal economic and social recovery plan. Let me emphasize at the outset that the Three Affiliated Tribes agree with the JTAC report that there should be no per capita payments to any tribal members. The tribes recognize their affirmative obligation to present a focused and realistic program for the implementation of the JTAC recommendations on the Fort Berthold Reservation. No amount of money, unless it wisely programmed for tribal needs over a substantial time horizon, will allow the recovery of the Three Tribes from the impacts of the Garrison Dam.

There must be a careful and considered blending of a realistic amount of just compensation, the replacement of lost social and physical infrastructure, and possibly some irrigation development on the reservation. Such a judicious blending will set the stage for the sustained tribal economic and social recovery from the impacts of the Garrison Dam. The Three Affiliated Tribes have four goals through the implementation of the JTAC recommendations: No. 1, the restoration of tribal community well-being; No. 2, the assurance of tribal government integrity and stability; No. 3, the eventual achievement of economic parity with the non-Indian communities surrounding the reservation; No. 4, the elimination of dependence.

I will briefly address the JTAC's core recommendations: No. 1, just compensation. The JTAC recommended the Three Affiliated tribes be awarded $178.4 million as the substitute or replacement value of their economic base that was taken as the site for the Garrison Dam.

The CHAIRMAN. May I interrupt?

Mr. LONE FIGHT. You bet.

The CHAIRMAN. How did you reach that figure?

Mr. LONE FIGHT. We reached that figure not nearly on the basis of fair market value and those types of determinations, but looking at the loss of the tribe as the whole economy, the economic structure as well as the social structure of that tribe.

The CHAIRMAN. Do you have documents to support this?

Mr. LONE FIGHT. I think at this time I will call on—I guess the JTAC recommendations is where we're getting the information from. It is their recommendation that we're going on. I call on our attorney to briefly explain that process.

Mr. CROSS. Mr. Chairman, thank you very much. My name is Raymond Cross. I'm the tribal attorney for the Three Affiliated Tribes.

Let me point out, Mr. Chairman, that the original figure suggested for compensation was not $17 million, it was $30 million. So, you see the downward spiral of the amount of money targeted for just compensation.

The CHAIRMAN. Who recommended $30 million?

Mr. CROSS. This was documented in the studies of MRBI Report No. 166, which we're going to transmit shortly to this committee. That was a resolution figure set by the early studies of that MRBI studies and accepted by early indications in the development of a compensation figure by Congress.

The CHAIRMAN. So, this is a Government recommendation?

Mr. CROSS. This is a Government report and we have it available for this committee, Mr. Chairman.

The CHAIRMAN. It went from $30 million to $17 million to $12 million?

Mr. CROSS. $30 million to $17 million to $12.6 million.

Let me at this time introduce Mr. Bill Gorman. He has reviewed in detail the studies documenting the figures arrived at, the methodology and we also have the background studies that were submitted as evidence to the JTAC for this Committee and will transmit it.

The CHAIRMAN. Fine.

Mr. CROSS. At this time I'd like to introduce Mr. Gorman.

Mr. GORMAN. Mr. Chairman, I'm an agricultural economist with New Mexico State University. I did not do the economic analysis, but the analysis was done by Dr. Ron Cummings, one of the outstanding agricultural economists and resource economists in the United States. I reviewed his procedures. I find them very, very supportable, and highly documentable and most agricultural economists would accept this as a reasonable way of valuating those resources.

Mr. LONE FIGHT. Thank you, Dr. Gorman. I'll proceed with my statement.

The Three Affiliated Tribes are aware that only a focused and fiscally restrained tribal economic recovery plan will serve the JTAC's purpose as well as the long range needs of the Three Affiliated Tribes. I will briefly outline the elements of a plan that the Tribes believe will work on Fort Berthold. No. 1, a tribal Economic Recovery Fund should be established, under the supervision of the Secretary of the Interior, as the means to establishing self-sustaining tribal and individual enterprises that will generate both jobs and the enhancement of underlying tribal assets. Over the long-term this will generate a new and diversified economic base for the tribes. This fund is necessary in order to ensure a sustained and steady flow of funds to nurture the start up and early operation of these new business enterprises. The tribes acknowledge that there are social and educational barriers to be overcome. However, through the wise utilization of tribal community development corporations each of the five tribal segments would be eligible to apply for assistance from the economic recovery fund.

No. 2, replacement of lost tribal infrastructure. The JTAC recommended the replacement on Fort Berthold of certain critical tribal physical and social infrastructure lost to the creation of the Garrison Dam: tribal health care facilities, school dormitories, a bridge for access between the communities and central facilities and adequate secondary access roads. The tribes believe that these are critical elements and we are working under existing law and authority to have the Bureau of Indian Affairs, Indian Health Services and other Federal agencies, review and evaluate these tribal needs. The tribes may find it necessary to ask additional Congressional authority if the responsible Federal agencies find they cannot respond to these critical needs under existing law.

However, one JTAC recommendation that undoubtedly will need Congressional authority for implementation is the award of a meaningful tribal preference right to Pick-Sloan Missouri River Basin Power. Our information from the Federal utility marketing agent involved, the Western Area Power Authority, is that Congressional authorization will be a necessary prerequisite for the small set aside of preference power to meet the full load domestic and municipal needs of the tribes. Congressional action will also be necessary to provide for the transmission costs of such power from the Garrison power plant to the tribal homes and facilities on the reservation.

No. 3, irrigation and MRBI development on Fort Berthold. The JTAC recommended that 30,000 acres of reservation lands be developed for irrigated agricultural use in order to replace the irrigable land lost to Garrison. However, the implementation of this recommendation is not requested by the tribes until certain technical and economic feasibility issues regarding irrigation are resolved by the Bureau of Reclamation in fiscal year 1988.

The CHAIRMAN. May I interrupt?

Mr. LONE FIGHT. You bet.

The CHAIRMAN. It's been suggested that considering the economic condition of farmers that agriculture might not be a feasible or practical source of income for the Indians in your tribe. Secretary Swimmer suggested that there are other alternatives, whatever they are. Have you made a study to see if there are other alternatives?

Mr. LONE FIGHT. At this time——

The CHAIRMAN. Other than agriculture?

Mr. LONE FIGHT. Mr. Chairman, it's always difficult to look into a crystal ball and say, hey, this is going to be like this in 20 years from now, and as you well know, the economy fluctuates based on demands made by issues that are uncontrollable and at this time we are waiting for some studies to be completed before we proceed in that direction.

The JTAC recommended that a complete municipal, industrial and rural water development system be constructed to protect the health and environmental needs of the tribal population. The cost for such a system on Fort Berthold is estimated to exceed $50 million. This exceeds the authorized level of Public Law 99–294.

The tribes are working with the Bureau of Reclamation to complete the needs analysis and to finalize the estimated costs to meet these needs. At that time, we'll be prepared to report back to the Congress.

Mr. Chairman, the Three Affiliated Tribes have sacrificed a great deal for the success of the Pick-Sloan Program. But we are ready, with Congressional assistance, to go forward with an economic recovery plan that will ensure the future economic growth and eventual independence of the Tribal people of Fort Berthold.

This concludes my testimony and I will be happy to respond to any questions you may have. Thank you.

[Prepared statement of Mr. Lone Fight appears in the appendix.]

The CHAIRMAN. Was my interpretation of history, as it developed from the 1940's, a correct one?

Mr. LONE FIGHT. Yes; I believe you're correct in my opinion.

The CHAIRMAN. Do you believe that the conduct of the U.S. Government through its agents, the Department of the Interior and the Corps of Engineers, was ethical?

Mr. LONE FIGHT. No; I do not.

The CHAIRMAN. Do you agree with a prior witness who said that you were unwilling sellers——

Mr. LONE FIGHT. Yes; I do. I agree.

The CHAIRMAN. And they were threatening buyers?

Mr. LONE FIGHT. I agree.

The CHAIRMAN. Are you suggesting that members of your tribes seriously believe that they had no choice?

Mr. LONE FIGHT. We had no choice.

The CHAIRMAN. That if they did not agree it would get worse with the passage of time?

Mr. LONE FIGHT. That's correct.

The CHAIRMAN. Is is also true that before the agreements were signed and the negotiations concluded, the Corps of Engineers began the construction?

Mr. LONE FIGHT. This is written testimony, written record.

The CHAIRMAN. What was the nature of that construction?

Mr. LONE FIGHT. I'm not really at all sure, because—I'll have to ask my attorney to address that.

Mr. CROSS. Thank you, Mr. Chairman. The process, as you know, for project authorization was such that the studies, in fact the entire Pick-Sloan Plan which cited the five main stem dams, including the major control dam, or the high dam, Garrison on Fort Berthold, was all done without consultation with the Indian people and was completed by December 22, 1944, and embodied in the Flood Control Act of that year.

The CHAIRMAN. There were no public hearings?

Mr. CROSS. There was no public hearings. There was testimony by Bureau of Indian Affairs personnel. And they indicated that there was going to be substantial impact on the Fort Berthold people. In fact——

The CHAIRMAN. Did the Bureau of Indian Affairs agree or disagree with the plan?

Mr. CROSS. They indicated that their position was that it was too bad that the Indians had to remove, but some future provision should be made for their reestablishment. That was the sum and substance of their testimony and we have that legislative history available.

The CHAIRMAN. Did they conduct themselves like trustees of the Indians?

Mr. CROSS. I don't think that any objective observer would say that their primary interest was the well-being of the tribal people. I think their interest was to work with the Corps of Engineers to set a scenario, a convenient scenario, not for the Indians, but for the Corps of Engineers, the War Department and the Bureau to effect the removal with as little fuss as possible.

The CHAIRMAN. Then you're saying that the advocacy of the cause of the Indians was insufficient?

Mr. CROSS. I'm saying, Mr. Chairman, that the process, the political process that was put into place, that it began with the adoption of the Pick-Sloan Program on December 22, 1944, provided no point of access for the tribes to influence that. In 1946 they prevailed on Congress to impose the Indian clause limitation, on the direct construction of the Garrison Dam itself. Colonel Pick, the representative, the primary representative of the Corps of Engineers, proceeded to build the project sites such as Riverside, proceeded to put in all the infrastructure into place that represented subtantial investment so that in a sense, the Government was already committed to building Garrison, but that they didn't run afoul of the letter of the law by building the dam itself, by having the bulldozers come in to clear the way for the large earth-filled dam known as Garrison.

What happened then, was that the War Department was required under the terms of that mandate to provide a replacement reservation. They just couldn't do that because those lands weren't available any more since the hydraulic system imposed rendered no bottom lands available on the Missouri River anywhere. Instead they offered uplands, they offered bad lands, and those were rejected as insufficient by the Secretary of the Interior on behalf of the Indians.

The next year after that, after that attempt was made, the War Department prevailed on Congress to remove the Indian clause limitation on the direct construction of the dam itself. So, by that time the die was cast. There was no choice for the Indians but to remove. The only issue remaining then, was the negotiation itself of the amount of money involved. As you've already heard, Mr. Chairman, the amount of money involved kept going down. So, the prudent person, including the tribes, are saying, gee, despite all the evidence, despite the MRBI Reports, we had best take a hard look at the settlement terms offered. And, in fact, the Settlement Act, 81-437 was termed in such a way that if the Indian people on Fort Berthold did not vote to accept it, the money appropriated for that purpose would then fall back into the Treasury. So, that it was to pardon the phrase, legimately on a take it or leave it basis, it was a situation in which the tribes, if they didn't accept the terms of the Settlement, which they had very little role in influencing, would have nothing and they would still be removed.

The CHAIRMAN. During the, quote, "Negotiations", end quote, were the tribes represented by legal counsel?

Mr. CROSS. Yes. They were represented by legal counsel, but at a very far distance. In other words, they were represented by a legal counsel in Washington, DC. The ability at that time of the legal counsel to sit down with the tribal people back in those days, to understand their perspective, may have been influenced by factors that perhaps should't have influenced them. One factor is that he, as well as the Indians, noticed that the trend of the settlement offer, aside from the MRBI context, which had set out a fairly costly and complex rehabilitation plan, that was not being observed by the——

The CHAIRMAN. Was the counsel retained by the tribes?

Mr. CROSS. Yes, it was.

The CHAIRMAN. Did the counsel recommend that the tribal sign on?

Mr. CROSS. The counsel reluctantly recommended to the tribes people that the accept the terms of the Settlement Act, because removal was imminent. As you realize, the construction was proceeding and by 1951 the dam was substantially complete. So, that the prospect that faced the Indian people is to be removed, but left destitute without any money that would substitute for their lifestyle and their income that they had on the historic reservation.

The CHAIRMAN. Did the Indian tribes petition the Congress?

Mr. CROSS. Yes; they did.

The CHAIRMAN. When was this?

Mr. CROSS. The tribal delegation made numerous trips, several trips back and, one of the successful trips that they made was to consult with their Congressional delegation. And then the "lieu lands" proposal was put into place in 1946. We have documented history of that approach. The concept then was provided a replacement reservation so that literally, both in terms of quality and quantity, the economic base of the tribe would be replicated. Those lands were not available after the War Department, or the Secretary of War made several offers. Those offers were rejected and properly so, by the Secretary of the Interior, as not comporting with the statutory mandate of quality and quantity.

The CHAIRMAN. Apparently the Congress did not respond too positively. It went from the prior $17 million to $12 million?

Mr. CROSS. That's exactly right. What happened is that, in terms of looking at the formula that would have to be taken into account, the MRBI background and those other reports that were expert analysis of the feasibility and the costs of removing the Indian people, is that, and I think quite frankly, Mr. Chairman, it was done not in terms of any sort of rational process of determining what would be necessary to reestablish those people, the Indian people, it was done with an eye toward budgetary limitations. It was done with an eye towards what would be the cheapest way to do it.

The CHAIRMAN. As an attorney, what is your comment on the Secretary's suggestion that this matter should be resolved in the courts?

Mr. CROSS. Let me tell you what my response to that is. Originally the tribes, in their dealings with the Corps, and as you know after the "lieu lands" options faded simply because they were not available, the Corps was then authorized in Public Law 296 to negotiate. Well, in fact an amount was put into that law as a top dollar amount, a top dollar amount, $3.7 million for land acquisition, $1.5 million as the relocation costs. These were the top dollar amounts that formed a base line of what the Corps could do. They were going to treat the tribes as if they were mere private condemnees, without respect to the damage to the treaty purposes, without respect to the ability of the tribes to reestablish themselves on the reservation and carry on, as they did before on the historic reservation. That amount was capped.

What happened was that the issue for just compensation under that approach was to be left for the courts. When that contract was submitted back to Congress, Congress rejected that. They said, we do not want to leave the issue of just compensation open to the courts to decide. Congress then made the decision to decide for itself how much just compensation was appropriate. They took the issue out of the hands of the courts and decided, as a matter of legislative fiat, what amount would accord with the just compensation.

If you take a look at the title of Public Law 81-437, the Taking Act, you'll notice that in the title of the act it was dual purposes. One is to vest the title to certain described properties in the name of the United States from the tribes. The other purpose in its title of the Act itself, is to provide just compensation for that. Congress, itself, took the responsibility away from the courts, cut off the rights of the tribes to go to court to decide the issue of just compensation, took on the role of deciding what just compensation was under the context. But, as you know, Senator, many times Congress responds to pressures not from a disinterested point of view, responds not as a court, a neutral court would, but responds, unfortunately, to influences that make it hard for that body to be the appropriate body to decide what level of just compensation is.

If you'll notice, and the legislative history is available, there was no rational just compensation approach to why the money went from $30 million to $17 million to $12.6 million. All the Indian people know the amount was going down, and not in incremental amounts, but in substantial amounts. So, I think the answer why the Indians couldn't go to court, was because Congress cut off that access. There are still jurisdictional barriers so that if the root of Congressional reference that Mr. Swimmer suggested would be available, the Congress, itself, would have to act to remove those jurisdictional barriers and provide the access in the Court of Claims by Congressional reference.

I don't think that's the appropriate way though, Mr. Chairman, for this Congress to proceed. I think that you have a reasonably, considerate, thoughtful report from a Federal Commission, two commissions, the GDUC, a Congressional Commission authorized under Public Law 98-360, a Secretarial Commission that studied the particular claims, and that this thoughtful, considerate report should be accepted by Congress as the base line way of dealing with these problems. They spent time, they heard expert testimony, they had hearings. And, I think we should use that as the base line approach and use the springboard of how the tribe would like to adapt, realizing the problems now with the budget deficit. Those same problems that prevented the tribes from getting just compensation in 1949, because of budgetary pressures. One more time, a reasoned analysis of what just compensation is from experts is going to potentially go by the wayside because of those budgetary pressures.

The CHAIRMAN. Mr. Chairman, do you, as the legal officer of the Three Affiliated Tribes of the Fort Berthold Reservation, approve and accept the recommendations of the Joint Tribal Advisory Committee as it relates to your problem?

Mr. LONE FIGHT. Yes; I do.

The CHAIRMAN. Without reservation?

Mr. LONE FIGHT. Without reservation.

The CHAIRMAN. I will do my best to convince my colleagues on this committee and on the other committees to do likewise.

Mr. LONE FIGHT. Thank you very much.

The CHAIRMAN. I thank you very much.

Before proceeding with the chairman of the Standing Rock Sioux Tribe, I'd like to note the presence in this committee room of the traditional tribal elders of the Hopi Indian Tribe. We welcome you, gentlemen. Thank you very much.

Now, I would like to call upon the chairman of the Standing Rock Sioux Tribe, Mr. Charles Murphy, and he will have with him, Mr. Al White Lightning, chairman of the Tribal Select Committee on Water and member of the tribal council, Mr. Robert McLaughlin, and Mr. Everett Iron Eyes.

STATEMENT OF ALLEN WHITE LIGHTNING, STANDING ROCK SIOUX TRIBE, CHAIRMAN, TRIBAL SELECT COMMITTEE ON WATER, AND MEMBER OF THE TRIBAL COUNCIL

Mr. White Lightning. Thank you, Mr. Chairman. I regret to inform you that Mr. Murphy is not able to make it. He has laryngitis. Mr. Chairman, for the record, you have a copy of the testimony that we have provided you.

The Chairman. Without objection, your whole statement will be made part of the record.

Mr. White Lightning. Thank you, sir.

I believe the majority of the documents that we have provided to the committee and also to the Bureau of Indian Affairs, along with the other agencies, without——

The Chairman. All relevant and appropriate documents will be made part of the record.

Mr. White Lightning. Thank you, sir.

There were several questions that you had earlier, Mr. Chairman, relative to Sitting Bull's grave, and I'd like to very briefly apprise you of that.

The Chairman. Please.

Mr. White Lightning. As a result of—in 1953 the Mobridge Chamber of Commerce out of South Dakota attempted to steal the body of Sitting Bull from Fort Yates Burial Grounds. They did take a body, but of a U.S. soldier that was buried next to Sitting Bull. Presently, the grave of Sitting Bull is about 10 feet from the backwaters of the Oahe, sitting in Fort Yates.

It was ironic that the Army Corps of Engineers, General Dominy, I believe his name is, when we talked earlier about the Oahe Dam, he indicated that there was recreation. There is no recreation development of any kind within the boundaries of the Standing Rock Indian Reservation.

The other thing I wanted to bring up, Mr. Chairman, is that during this period of time that the Bureau of Indian Affairs was carrying out its trustee responsibilities, there was an individual by the name of Mr. Commission Dillon Myers. Mr. Myers was the Commissioner of the Bureau of Indian Affairs during this time, but immediately prior to that he was in charge of the Japanese Relocation Program. And, it's very unfortunate.

I also want to indicate to you, you know, the Army Corps of Engineers—in the City of Fort Yates, it is completely surrounded by water, the backwater of it is—and there's another community of Wakpala, South Dakota, that's flooded annually. We have been complaining or submitting requests to the Bureau of Indian Affairs. We have yet to get that rectified.

The CHAIRMAN. Just for the record, I couldn't quite hear you properly. Did you say that somebody wanted to steal the remains of Chief Sitting Bull?

Mr. WHITE LIGHTNING. Yes, sir; the Chamber of Commerce of Mobridge, SD, they still have this story once and a while, that they printed in the Mobridge Tribune, you know, telling how that they got the remains of Sitting Bull and they have a statue of him on the North side of the city facing south. So, they have their little story, and the truth, our elders tell us that nobody was taken, no Indian body was taken, it was the body of a soldier, that was stationed in Fort Yates at the time.

The CHAIRMAN. So the remains of Sitting Bull are still——

Mr. WHITE LIGHTNING. Still in Fort Yates——

The CHAIRMAN. At Lake Oahe?

Mr. WHITE LIGHTNING. Well, almost going under as a result of the backwater from the Army Corps of Engineers.

I wanted to, Mr. Chairman, you know, the General and the Assistant Secretary both made reference to excess lands. Presently we have lands that Army Corps of Engineers never committed as taken area that is flooded. We have present lands that the taken area markers are sitting on top of hills and alongside of hills, and if the flood ever came up that far, just like Mr. Pat McLaughlin, former chairman of Standing Rock Sioux Tribe said, Goodbye St. Louis. It's way up there.

I wanted to include in the—before you, Mr. Chairman, are comments relative to the reserve water rights. And I would like to read this particular portion of it: The Standing Rock Sioux Tribe notwithstanding any part of Public Law 98-360, or any part of the final report of the Garrison Unit Joint Tribal Advisory Committee does not accept any diminishment of the quantity of water from the Missouri River, which the tribe may beneficially use pursuant to the Winters doctrine or any rights we have under Federal law existing and consistent with the U.S. treaty commitments with the tribe. The tribe further holds the principle that water in sufficient quantities is inseparable from the principle of further development to the tribe and its people. Integral with the above is that the Winters reserved water rights held by the tribe are exempt in whole and in part from any and all provisions of the so called McCarran amendment.

That, Mr. Chairman, I'd like to bring before you. However, at this point, Mr. Chairman, just going back to No. 1, is that the tribe, when we met in tribal council, has instructed me to present to you the one that they place as a high priority, is the No. 9 of the report, which is the just financial compensation for the economic loss incurred by the tribes as a result of the impoundment.

I'd like to set the record straight on certain comments made by the Assistant Secretary relative to that particular issue. At this point, I would like to introduce Mr. Robert McLaughlin. We have engaged him to work with us as our economic advisor.

[Prepared statement of Mr. White Lightning appear in the appendix; related documents are retained in committee files.]

The CHAIRMAN. Mr. McLaughlin.

STATEMENT OF ROBERT McLAUGHLIN, PRESIDENT, ROBERT McLAUGHLIN CO., SOLEN, ND

Mr. McLAUGHLIN. Thank you, Mr. Chairman. All throughout, Mr. Chairman, several comments have been made with regard to the just compensation issue. I disagree with the testimony by the representative of the Corps of Engineers. I disagree with the testimony of Mr. Swimmer and others who commented on the just compensation issue.

What I found in my analysis of economic loss, was the Corps of Engineers did not utilize economic cost benefit analysis the way it should be used. They simply did not take into consideration the opportunity costs for that public project. In our case, it would be the Oahe Dam. What I mean by this, is in 1951, for example, Kansas City had a flood, and a representative from the Corps of Engineers in 1951 appeared before the tribal council and indicated that the dam would be going forward and at that time several members of the tribe, the tribal council and other representatives of the tribe, asked what benefit, why do this, why build this dam, why flood our homelands, what benefit would that be. And the Corps of Engineers representative said, well, just 2 months ago a flood occurred in Kansas City and there was $1 billion in loss, and for the good of the people downstream, we consider that a benefit.

Well, in their analysis they simply forgot to include the analysis of the opportunity costs for that structure. What would happen, the tribal officials said, what is the difference, you then would go flood our land. We would have a permanent flood. That flood would last for 100 years. Those are costs that we would incur. That's a price that we would pay. Now, that was a commonsense statement, but it's well founded in economic theory in cost benefit analysis theory, and the Corps and the Bureau of Reclamation simply did not calculate those costs.

But, I did. I went back and I looked at the costs that occurred to us in 1951, and established market values for those costs and they come up to be a substantial amount. The just compensation price that the Corps of Engineers recommended was, and that Congress finally approved and provided to the tribe, was $1.9 million or $36 an acre. My determination showed that the foregone resources, the opportunity costs for that flood, the permanent flooding of the homelands and the removal or the tribe from our homelands, the price, and this is very conservative, because there are other ways to calculate it, and I think it would go into the billions of dollars, but I don't think Congress would entertain that kind of compensation, was about $59 million in 1951 prices, and then we amortize that out to current day, and that was $361 million. And I think that's a very conservative estimate of the economic loss incurred by the tribe for the removal.

The key point here in terms, and I don't know if the Corps of Engineers official is present, is that the tribe was not in the marketplace. It was being permanently removed from an irreplaceable economic value, the hunting, the farmland values, the berries, the medicine, everything was now being permanently removed from the tribe. There was no, as the witnesses from Fort Berthold pointed out, there was no replacement. That's a very important theoretical and practical consideration from cost benefit analysis. That's very important.

When then you do the analysis, you then have to pay for that. That is then a social bed, and that is compensated by opportunity pricing, and we do this through a mechanism called shadow pricing. So, I think that the Assistant Secretary is clearly wrong in all of his statements and I will sit down with him, if he so desires, and explain just what cost benefit analysis is and how it's supposed to be practiced, and that we can attach and estimate pretty accurately what the value of that loss was at that time in 1951.

The CHAIRMAN I would hope that you will sit with the Assistant Secretary. I would also hope that representatives of the Three Affiliated Tribes would also do that. And, in each case we will have committee representatives sitting in to make certain that these meetings are meaningful and with a goal of some productivity.

Mr. MCLAUGHLIN. Mr. Chairman, I would like to comment on Mr. White Lightning. I know, maybe he is reluctant to do so. I also attended the meeting with Assistant Secretary Swimmer. I wish he would have stayed around, because it is now our opportunity to comment on that meeting.

Mr. White Lightning mentioned that he laughed in our face. Well, that's a figurative statement. We presented to him a proposal to develop a financial institution, a development financial institution, and he called it a foreign aid package and said that our submission was going to be nothing but three meetings and three conferences and summarily dismissed us from his office with those kind of comments. And, we took great exception to this. It was simplistic thinking on his part and it was demeaning to us as tribal representatives, when his own staff asked us to come in and propose that to him. So, we were very concerned about that behavior. We hope, and he's indicated that he would meet with us in a rational kind of way, and we certainly hope he does, but if he's going to continue to treat us in that fashion, it would be difficult to carry on a sane conversation or a logical, reasonable conversation with the gentleman.

The CHAIRMAN. If the Congress should decide to involve itself in the resolution of this problem, one of the key decisions that we will be called upon to make will relate to the price tag. You have indicated that the appropriate price in 1951 was $59 per acre.

Mr. MCLAUGHLIN. The price that we determined at the taking time, 1959 is when the papers were signed.

The CHAIRMAN. 1959?

Mr. MCLAUGHLIN. Yes; the negotiations started in 1959, when they sent the team from the Bureau of Indian Affairs and Corps of Engineers.

The CHAIRMAN. You maintain that amortized would come up to $300 plus million?

Mr. MCLAUGHLIN. Yes; we utilized Treasury rates in amortizing it from 1959 to today. The price per acre, just off the top of my head, in 1959, we estimated approximately $60 million, so you would divide 56,000, so the price per acre would be about $1,000 for the true loss.

Let me also comment, and this is very interesting. When the Corps of Engineers—we went back to them 10 years later in 1969 to lease, you know they do practice—they have an enterprise, they administer power, they sell it, they lease land, they get revenue for that. And when the tribe went back to establish an economic project in what is called the taking area, the land that they purchased for just compensation for $36 from us, 10 years later we went back to negotiate to put in a recreation facility. And, they valued that land at $5,000 an acre. And, they were going to lease it to us based upon the capitalization of a $5,000 per acre price. So, they clearly know the value. I mean, 10 years later they valued it at $5,000, when they purchased it from us for $36. So, they clearly know the value of the tract of land.

The CHAIRMAN. Well, they know it's worth more than $59.

Mr. McLAUGHLIN. Oh, certainly. And, we told them that we couldn't afford it and we moved the facility off the taking area onto a hill on our trust land. We just simply couldn't afford to pay their, what we called an unreasonable lease rate for the land that they had purchased 10 years earlier for $36.

The CHAIRMAN. If you were in charge of the negotiating team from the Standing Rock Sioux Tribe, what is the bottom figure that you will not go below?

Mr. McLAUGHLIN. Oh, I could not—that would be a matter for the tribal leaders, the tribal council. I couldn't say.

The CHAIRMAN. Is there a bottom number, Mr. Chairman?

Mr. WHITE LIGHTNING. I would tend to think that the amount proposed in our study would be the $361 million would be a conservative fugure that we would probably look at.

The CHAIRMAN. We will look at that, but I'm also a realist and if I know the Budget Committee and the White House, that would be rather difficult to fly around here.

Mr. WHITE LIGHTNING. We understand that, sir.

The CHAIRMAN. Can you think of another number that might fly? I would suggest, if we are to seriously consider this, we will have to come up with a price tag. That's the first question they'll ask me on the Senate Floor. And I don't want to come out with a number which is of my own making. I would like to come out with some number that is the result of consideration and determination by your tribal council. So, I may call upon the two chairmen to seriously consider this, and after careful thought, communciate what you consider to be fair under the present circumstances.

Mr. McLAUGHLIN. Mr. Chairman, there is a mechanism that one can go back and, I suppose, negotiate on the—our actual just compensation in 1959 was $59,083,000. Well, my recommendation to the tribe was that we use—tag the amortization schedule to the Federal Treasury rates. The tribe could consider some other mechanism to amortize that out into the future. That would be a way that——

The CHAIRMAN. That's $59 above what they gave you?

Mr. McLAUGHLIN. No; that was $59 million—they provided $1,900,000 in just compensation at $35.60 an acre and they also provided damage money as was discussed earlier, and that was in the amount of about $3,600,000. So, the sum total they provided to us, which would be—is subtracted out was $5,251,000. The bottom figure that still is what our calculation showed remained to be paid us in 1959 is the $59 million figure. And, then we amortized that out using Federal Treasury rates, and I'm suggesting that maybe another rate could be applied here. I certainly will recommend that or discuss that with the tribal council.

The **Chairman**. Mr. Chairman, do you have anything further to state?

Mr. **White Lightning**. No, sir; we have all the records here——

The **Chairman**. I'll ask a formal question.

Mr. **White Lightning**. Sure.

The **Chairman**. Do you, as chairman of the Standing Rock Sioux Tribe, accept and approve the recommendations of the Tribal Advisory Council without reservation?

Mr. **White Lightning**. With one exception, sir. The acreage, 2,380 irrigable acres identified within the Public Law 99-294, does not represent the potential total acreage on the reservation. At the present time there are ongoing soils investigations that will identify future irrigable acreage. That would be the only thing that we would have a problem with, Mr. Chairman. However, we do agree with all of the other recommendations made by the JTAC.

The **Chairman**. Mr. Chairman, I thank you very much and your associates for waiting this long to testify, but the subject matter before us is obviously very important.

Mr. **White Lightning**. Yes, it is, sir.

The **Chairman**. And of major concern to the members of your tribe. I can assure you that I will make certain that members of my committee are made aware of your concerns, and would hope that we will come forth with a resolution that will please you, sir.

Mr. **White Lightning**. Thank you, sir.

The **Chairman**. The committee will stand in recess subject to the call of the Chair. The record will be kept open until April 15. So, if any of you have any additional documents you wish to submit, you may do so until noon, April 15.

[Whereupon, at 6:53 p.m., the committee adjourned subject to the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

FINAL REPORT OF THE
GARRISON UNIT
JOINT TRIBAL ADVISORY COMMITTEE

THE FORT BERTHOLD INDIAN RESERVATION
and
THE STANDING ROCK SIOUX INDIAN RESERVATION

MAY 23, 1986

I. EXECUTIVE SUMMARY

The Garrison Unit Joint Tribal Advisory Committee (JTAC) was established by the Secretary of the Interior to examine and make recommendations with respect to the effects of the impoundment of waters under the Pick-Sloan Missouri Basin Program (Oahe and Garrison Reservoirs) on the Fort Berthold and Standing Rock Indian Reservations. The Secretary's action implemented a recommendation in the Final Report of the Garrison Diversion Unit Commission (GDUC) established pursuant to Public Law 98-360, Section 207.

The Secretarial Charter which established the JTAC (a copy of which is included in the appendix) directed and authorized this Committee to examine and make recommendations with respect to the following items:

Item 1. Full potential for irrigation on the Fort Berthold and Standing Rock Indian Reservations,

Item 2. Need for financial assistance for on-farm development costs,

Item 3. Development of the shoreline recreation potential of Lake Sakakawea and Lake Oahe,

Item 4. Return of excess lands,

Item 5. Protection of reserved water rights,

Item 6. Funding of all items from the Garrison Diversion Unit funds, if authorized,

Item 7. Replacement of infrastructure lost by the creation of Garrison Dam and Lake Sakakawea and Oahe Dam and Lake Oahe,

Item 8. Preferential rights to Pick-Sloan Missouri River Basin Power,

Item 9. Additional financial compensation, and

Item 10. Other items the commission many deem appropriate.

The Committee held hearings on the Standing Rock Reservation and the Fort Berthold Reservation as well as several hearings in Bismarck, North Dakota, to receive testimony and evidence. The Committee, during the process of the hearings, was made aware of the accuracy of the observation of the GDUC that ". . . the Tribes of the Standing Rock and Fort Berthold Indian Reservations bore an inordinate share of the cost of implementing Pick-Sloan Missouri Basin Program mainstream reservoirs." See Final GDUC Report, Appendix F, P.57.

This report includes findings and recommendations which undertake, as the GDUC recommended, "to find ways to resolve inequities" borne by the tribes. The findings and recommendations relating to the two reservations are not identical due to differences in their respective circumstances. Nevertheless, some of the effects of implementation of the Pick-Sloan Missouri Basin Program were common to both reservations.

1. The Indians were not only unwilling to sell their land, but strongly opposed the taking of their lands.

2. The Indians felt intimidated by the fact that construction on the dams began before Indian lands were acquired. They then felt that the taking of their lands was inevitable.

3. During the negotiation phases, assurances were given expressly or by implication by various Federal officials that problems anticipated by the Indians would be remedied. The assurances raised expectations which, in many cases, were never fulfilled.

4. The quality of replacement homes was inadequate in many respects, but most notably with regard to insulation and construction necessary to meet severe climatic conditions. The deficiencies, in many cases, resulted in inordinately high heating bills.

5. In the words of GDUC, the Indian land taken was, "prime river bottomland" and the most productive parts of the reservations.

6. The quality of life enjoyed by the tribes on the river bottomlands has not been replicated in the areas to which they were removed. The dramatic rise in the incidence of stress-related maladies and illnesses following removal of the Indians is circumstantial evidence that there is a casual relationship between these effects and the removal.

7. The Indians intensely feel that they were not justly compensated for the taking of their lands and related benefits by the United States.

8. Land acquisition practice of the United States was to acquire land in rectangular units. This practice with respect to Indians and non-Indians was to acquire all lands below a specific elevation by rectangular survey, metes and bounds. This resulted in the taking of a substantially larger area of Indian land.

A summary of the findings and recommendations with respect to each reservation follows:

A. FORT BERTHOLD INDIAN RESERVATION

Items 1 & 2. Full Potential For Irrigation and Financial Assistance For On-Farm Development Costs.

Development of irrigation on remaining Tribal lands would reduce the Tribes loss of their economic base and good farmlands. Reconnaissance-level studies suggest that up to 107,000 acres could be developed. The first step of this development is 30,000 acres and should be an integral part of the Garrison project and should be included in any Garrison funding authorization legislation. In the event that the Garrison funds are not used, the Tribal project should still be built. Costs should be deferred by Leavitt Act provisions. On-Farm costs associated with the irrigation project should be included as capital costs and deferred by Leavitt Act provisions.

Items 3 & 4. Development Of Shoreline Recreation Potential And Return Of Excess Lands.

The Army Corps of Engineers (COE) took lands up to the elevation of 1854 msl and other lands above this elevation for the operation of Lake Sakakawea because land ownership is based on a rectangular grid system. Thus, a considerable amount of land above this maximum position level of the reservoir is managed by the COE. The tribes contend that this excess land is not needed by the COE. The COE on the other hand, insists that all the land is required to operate the reservoir and assure public access. There is considerable potential for recreation development as well as existing facilities on Lake Sakakawea. The Three Affiliated Tribes would like to develop docks, campgrounds, resorts, picnic areas, boat ramps, etc., along the lakeshore as part of a Tribal economic enterprise. The former Indian lands comprising the present excess lands and the shorelands should be restored to the tribes subject to easements for project purposes.

Item 5. Protection Of Reserved Water Rights.

The tribe's right to water will be protected in a significant and beneficial manner by utilizing water on the irrigation project and municipal, industrial and rural system described in the report. The quantification of other uses should be carried out in cooperation with the tribe.

Item 6. Funding Of All Items From Garrison Diversion Unit Funds.

See Items 1, 2 and 10.

Item 7. Replacement Of Infrastructures Lost By The Creation Of The Garrison Dam and Lake Sakakawea.

The tribes are entitled to the replacement of infrastructure destroyed by Federal action: health care facilities, school dormitories, a bridge for access between the communities and the central facilities, and adequate secondary access roads. The replacement of a primary care in-patient health facility and out-patient services is deemed to be urgent and critical.

Item 8. Preferential Rights To Pick-Sloan Missouri Basin Power.

The Committee received a considerable amount of testimony that Tribal members were led to understand that they were to receive preferential rights to Pick-Sloan Basin power (some witnesses testified no-cost power was promised) to provide for lost fuel sources. That understanding is borne out by the history of the taking legislation. Preferential right to such power should not exceed 10 megawatts.

Item 9. Additional Financial Compensation.

The tribes clearly were not compensated in an amount calculated by a methodology which accounted for the unique circumstances and values taken from the tribe. The Committee received testimony from two economic experts who utilized methodologies designed to account for those unique circumstances and values. Utilizing both formulas for the Fort Berthold Reservation results in compensation due between $173.4 million and $411.8 million. The tribes can be fairly compensated only by determining the value of interests taken by using a formula such as that provided by the economic experts. The compensation, in any event, should not be less than the lower amount determined by the formulas. Per capita payments are not recommended.

Item 10. Other Items Which The Committee Deemed Important.

A complete municipal, industrial and rural water system is essential if the tribes are to realize economic growth. Power requirements for water system fall under item 8 above. Some funds have been authorized in HR1116 of the 99th Congress, but more funding is needed to complete the system. Credit interests need to be transferred from the Farmers Home Administration to the Bureau of Indian Affairs.

B. STANDING ROCK SIOUX INDIAN RESERVATION

Items 1 & 2. Full Potential For Irrigation And Financial Assistance For On-Farm Development Costs.

Development of irrigation on remaining Tribal lands would reduce the Tribes loss of their economic base and good farmlands. Four irrigation projects are recommended for construction initially. This development should be an integral part of the Garrison project and should be included in any Garrison funding authorization legislation. In the event that the Garrison funding is not used, the Tribal projects should still be built. Costs should be deferred by Leavitt Act provisions.

Items 3 & 4. Development Of Shoreline Recreation Potential And Return Of Excess Lands.

The COE took lands up to the elevation of 1632 msl and other lands above this elevation for the operation of Lake Oahe because land ownership is based on a rectangular grid system. Thus, a considerable amount of land above this maximum position level of the reservoir is managed by the COE, The tribes contend that this excess land is not needed by the COE. The COE on the other hand, insists that all the land is required to operate the reservoir and assure public access. The Standing Rock Sioux Tribes would like to develop docks, campgrounds, resorts, picnic areas, boat ramps, etc., along the lakeshore as part of a Tribal economic enterprise. The former Indian lands comprising the present excess lands and the shorelands should be restored to the tribes subject to easements for project purposes.

Item 5. Protection Of Reserved Water Rights.

An initial step to protecting the tribe's right to water results from utilizing water on the irrigation and municipal water supply projects in the report. The quantification of other uses should be carried out in cooperation with the tribe as they may request.

Item 6. Funding Of All Items From Garrison Diversion Unit Funds.

See items 1, 2 and 10.

Item 7. Replacement Of Infrastructures Lost By The Creation Of The Oahe Dam And Lake Oahe.

The Federal action caused a loss of infrastructure including roads, housing, rodeo arenas, race tracks, sawmills, and monuments. The Committee notes the need for weatherized and improved housing to repair and replace the inadequate facilities provided to the families relocated. Remedies for the loss of infrastructure are provided in the section on Additional Financial Compensation.

Item 8. Preferential Rights To Pick-Sloan Missouri Basin Power.

The Committee received a considerable amount of testimony that Tribal members were led to understand that they were to receive preferential rights to Pick-Sloan Basin power (some witnesses testified no-cost power was promised) to provide for lost fuel sources. That understanding is borne out by the history of the taking legislation. Preferential right to such power not to exceed 15 megawatts should be provided.

Item 9. Additional Financial Compensation.

It is clear that the tribes were not compensated in an amount derived from a methodology which accounted for the unique circumstances and values taken from the tribe. The Committee received testimony from two economic experts who utilized methodologies designed to account for those unique circumstances and values. Utilizing both formulas for the Standing Rock Reservation results in compensation due between $181.2 million and $349.9 million. The tribe can be fairly compensated only by determining the value of interests taken by using a formula such as that provided by the economic experts. The compensation, in any event, should not be less than the lower amount determined by the formulas.

Item 10. Other Items Which The Committee Deemed Important.

A complete municipal, industrial and rural water system is essential if the tribes are to realize economic growth. Power requirements for water systems falls under item 8 above. Some funds have been authorized in HR1116 of the 99th Congress, but more funding is needed to complete the system. Credit interest needs to be transferred from the Farmers Home Administration to the Bureau of Indian Affairs. The tribe urges that an "Indian Desk" be established within the organization framework of the Corps of Engineers to deal specifically with Indian problems. Hunting and fishing rights of the Standing Rock Sioux Tribe need better protection and enforcement by Federal authorities.

II. RECOMMENDATIONS

A. FORT BERTHOLD INDIAN RESERVATION

Item 1. Full Potential For Irrigation.

Although 107,000 acres have been identified as potentially irrigable, the Secretary should proceed immediately with the construction of the two irrigation projects, Six Mile Creek and Lucky Mound. These projects should be regarded as the first phase in the full development of the irrigation potential of the remaining lands of the Fort Berthold Reservation. The Secretary should also submit proposed legislation to Congress that would allow all capital costs, including on-farm development costs to be deferred under the Leavitt Act. This proposed legislation should further provide for: the enlargement of the above referenced irrigation projects to 30,000 acres, as recommended by this Commission; land acquisition costs associated with the purchasing of all fee patented land in these areas to be treated as project costs; the BIA or Bureau of Reclamation to operate, maintain and replace the structural components of the project at a cost to the Tribal government, or its members, based on ability to pay; and intake and sprinkler pressure pumping power at preferential Pick-Sloan power rates for both for these projects.

Any fee land acquired for Tribal irrigation projects must be from willing sellers at fair market value. Land should be acquired under the rules established by the Department of Interior to ensure the protection of the tax base, school system, etc. The Secretary will be responsible for agreements for payments in lieu of taxes, where appropriate.

Item 2. Financial Assistance For On-Farm Development Costs.

On-farm development costs should be included in the capital cost of development and deferred under the Leavitt Act.

Item 3. Development Of Shoreline Recreation Potential.

Former Indian shoreline land and excess land should be returned to the Tribes, subject to flowage easements to protect U.S. Army Corps of Engineers (COE) administration and project needs and also subject to valid private leases. Such private leases should not be renewed but upon expiration, will include salvage rights and fair compensation for the loss of permanent improvements not subject to removal.

Item 4. Return Of Excess Lands.

See Recommendation 3.

Item 5. Protection Of Reserved Water Rights.

The Committee recommends the full development of irrigation and water systems to utilize and protect reserved water rights.

Item 6. Funding Of Items From Garrison Diversion Unit Funds.

Partial funding of the irrigation project (15,000 acres) in item 1 and partial funding of the municipal, industrial and rural water system in item 10 should be amendments to the authorization in HR1116 of the 99th Congress ($20.5 million has been authorized in HR1116 for Rural Water Systems).

Item 7. Replacement Of Infrastructure Lost By The Creation Of Garrison Dam And Lake Sakakawea.

The following facilities should be constructed to replace infrastructure lost:

a. A primary care in-patient health facility and out-patient services to meet the special health care needs of the tribe. This is an emergency need that should be pursued immediately.

b. A bridge over the lake at the old Highway State Route 8 should be constructed.

c. Dormitory annexes to two school facilities (Mandaree and White Shield) on the reservation for students presently attending off-reservation boarding schools should be constructed.

d. The grading, and other such routine maintenance, of all Tribal access roads from homesites to main travel routes should be made a routine part of the BIA program.

e. Housing should be weatherized and improved to repair and to replace the inadequate facilities provided to the families relocated.

Item 8. Preference Rights To Pick-Sloan Missouri River Basin Power.

The Secretary, in consultation with the Secretary of Energy, should make available to the tribe an allocation of preference power sufficient to meet energy related needs of the reservation as the result of the relocation. Further, the Secretary, if necessary, should propose draft legislation to Congress providing for an allocation of preference power to meet the Tribes full load demand for the above referenced purposes not to exceed 10 megawatts. This proposed legislation should also provide the necessary authority for the delivery of such power at no cost to the tribe except operation and maintenance costs to retail distribution facilities should be based on ability to pay. This legislation should also provide that any third party provider of such power to the tribe will not lose any allocation of preference power or otherwise be pecuniarily damaged by reason of any such allocation or delivery of preference power to the tribe. Power needs for irrigation and water systems are in addition to the 10 megawatts.

Item 9. Right To Additional Financial Compensation.

The Secretary should submit draft legislation to Congress that will ensure that the tribe is adequately compensated, either in cash or in-kind, consistent with this Committee's findings and conclusions. The tribe is entitled to a sum in the range between $178.4 million and $411.8 million as the substitute, or replacement, value of their economic base that was taken as the site for Lake Sakakawea. The compensation should not be less than the lower of the two amounts.

Item 10. Other Items Which The Committee Deemed Important.

a. In addition to the authorization contained in House Resolution 1116 of the 99th Congress, the Secretary should seek authorization and proceed immediately with the construction of a complete municipal, industrial and rural water supply system, as described in this report, to protect the health and other interest of the Tribal population. The proposed legislation should also provide that the Bureau of Indian Affairs or the Bureau of Reclamation operate and maintain an efficient metered system at a cost to Tribal people not to exceed $10/month/household for 10,500 gallons per month. Uses in excess of 10,500 gallons per month will additionally be charged at the same rate. Further, power is to be supplied at the Pick-Sloan Missouri River Basin Program preference power rate. (Note: There is $20.5 million authorized in HR 1116 for rural water systems).

b. The Secretary is requested to take action that would provide for the transfer of the interests of agricultural and ranch related lenders on the reservation from the Farmers Home Administration to the Bureau of Indian Affairs Credit Program at fair market value of the interest in the land encumbered.

B. STANDING ROCK SIOUX INDIAN RESERVATION

Item 1. Full Potential For Irrigation.

The Secretary should proceed immediately with the construction of four irrigation projects, Miscol, Porcupine, Black Horse and Little Eagle Units, when authorized. These projects should be regarded as the first phase of the full development of the irrigation potential of remaining lands on the Standing Rock Reservation. The Secretary should also submit proposed legislation to Congress that would allow all capital costs, including on-farm development costs to be deferred under the Leavitt Act. This proposed legislation should further provide for: land acquisition costs associated with the purchasing of all fee patented land in these areas to be treated as project costs; BIA to operate, maintain and replace the project at a cost to the Tribal government, or its members, after construction to be set in accordance with ability to pay; and furnishing preferential Pick-Sloan power rates for both intake and sprinkler pressure pumping for this projects. (Note: under P.L. 97-273, the Standing Rock Sioux Tribe believe they have preferential power rights).

Item 2. Financial Assistance For On-Farm Development Costs.

On-farm development costs should be included in the capital cost of development and deferred under the Leavitt Act.

Item 3. Development Of Shoreline Recreation Potential.

Former Indian shoreline land and excess land should be returned to the tribe, subject to flowage easements to protect U.S. Army Corps of Engineers administration and project needs and subject to valid private leases.

Item 4. Return Of Excess Lands.

See Recommendation 3. In addition, the Standing Rock Sioux Tribe should have the authority to set grazing rates on former Indian lands for taking area permittees equivalent to rates established for Tribal lands until both excess and shoreline lands have been returned.

Item 5. Protection Of Reserved Water Rights.

The Committee recommends full development of irrigation and water system to utilize and protect reserved water rights.

Item 6. Funding Of All Items From The Garrison Diversion Unit Funds.

The Secretary should fund those projects in item 1 and 10 from the Garrison authorization bill (HR 1116) that the Secretary deems appropriate.

Item 7. Replacement Of Infrastructure Lost By The Creation Of Oahe Dam And Lake Oahe.

The following infrastructure was lost to the Standing Rock Sioux Tribe as a result of the creation of Lake Oahe:

190	domestic water system
50	ranch water system
55,944	acres of land
22,000	acres of riverbed
95	miles of main road
24	miles of private road
190	housing units
3	rodeo arenas
2	race tracks
3	sawmills

These items are covered either directly or indirectly in item 9, Additional compensation. The Committee is recommending a reservation-wide economic development approach, rather than *ad hoc* compensation of the above.

Item 8. Preferential Right To Pick-Sloan Missouri River Basin Power.

The Secretary, in consultation with the Secretary of Energy, should make available to the tribe an allocation of preference power sufficient to meet their full load demand for domestic and municipal purposes. Further, the Secretary, if necessary, should propose draft legislation to Congress providing for an allocation of preference power to meet the Tribe's full load demand for the aboved referenced purposes not to exceed 15 megawatts. This proposed legislation should also provide the necessary authority for the delivery of such power at no cost to the tribe except operation and maintenance costs of retail distribution facilities should be based on ability to pay. This legislation should also provide that any third party provider of such power to the tribe will not lose any allocation of preference power or otherwise for pecuniarily damaged, by reason of any such allocation or delivery of preference power to the tribe.

Item 9. Right To Additional Financial Compensation.

The Secretary should submit draft legislation to Congress that will ensure that the tribe is adequately compensated, either in cash or in-kind, consistent with this Committee's findings and conclusions. The tribe is entitled to a sum in the range between $181.2 million and $349.9 million. As the substitute, or replacement, value of their economic base that was taken as the site for Lake Oahe. The compensation should not be less than the lower of the two amounts. That such compensation is to include restoration of forests and timber production, wildlife habitat, fruits, herbs and medicinal, and other plants and other restoration of vegetation, all of which was lost to the Oahe Reservoir. That such compensation is also to include development of shoreline recreation protection.

Item 10. Other Items Which The Committee Deemed Important.

a. In addition to the authorization contained in House Resolution 1116, the Secretary should seek authorization and proceed immediately with the construction of a complete municipal, industrial and rural water supply system, as described in this report, to protect the health and other interest of the Tribal population. The proposed legislation should also provide that the Bureau of Indian Affairs operate and maintain an efficient metered system at a cost to Tribal people not to exceed $10/month/household for 10,500 gallons per month. Further, power is to be supplied at the Pick-Sloan Missouri River Basin Program preference power rate. (Note: There is $20.5 million authorized in HR 1116 for rural water systems).

b. The Secretary is requested to take action that would provide for the transfer of the interests of agricultural and ranch related lenders on the reservation from the Farmers Home Administration to the Bureau of Indian Affairs Credit Program at fair market value of the interest in the land encumbered.

c. An "Indian desk" should be established within the Washington Headquarters of the U.S. Army Corps of Engineers. This office would deal with the numerous Indian concerns resulting from the Missouri River Reservoirs including, but not limited to, water level fluctuation; leasing shoreline land to non-Indians of, and other former Indian lands administered by the Corps, to non-Indians; reserved water rights, etc.

d. The rights of the Standing Rock Sioux Tribes to hunt and fish within that part of Lake Oahe within the exterior boundaries of the reservation should be vigorously protected by Federal authorities through additional game wardens who shall pursue prosecution of violations.

PREPARED STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON WATER AND POWER

Passage of last Congress' Garrison Diversion Reformulation Act of 1986 focused public attention on the need to address contemporary water needs in North Dakota and the appropriate Federal role. The Act authorizes and directs the implementation of certain recommendations made by the Garrison Diversion Unit Commission. The Garrison Diversion Unit Reformulation Act of 1986 was the culmination of years of effort between the State of North Dakota, environmentalists, would-be water users, and the Congress. The Act forcibly wrought changes in decades-old planning and thinking in order to bring a modern vision to water resources development in North Dakota.

It was not an easy task -- and the effort is far from complete.

That is why we are here today.

As all of you know, the Garrison Unit Joint Tribal Advisory Committee was established by the Secretary of the Interior pursuant to a recommendation of the Garrison Diversion Unit Commission. The Advisory Committee was specifically charged with examining and making recommendations with regard to the Tribes of the Fort Berthold and Standing Rock Sioux Reservations.

As submitted to the Secretary of the Interior on May 23, 1986, the Advisory Committee's report provides a comprehensive framework upon which to redress the wrongs of a past generation. In restrospect, it is incredible to me that the needs of the people of the Standing Rock and Fort Berthold Reservations were not given greater attention by the Congress when the Missouri River main stem dams were built. This hearing is an important first step in giving due recognition to the burdens inflicted on the Tribes by the Pick-Sloan Program. This recognition is long overdue. Just as we brought the Garrison Diversion Project into the context of contemporary resource development, thereby fulfilling the promise of a past generation, so must we recognize our obligations to the people of the Standing Rock and Fort Berthold Reservations.

Many of the recommendations contained in the Committee's report are preliminary at best. It is up to the Congress, working with the Tribes, the State of North Dakota, and the Administration, to determine those options and actions which will best serve the needs of the Tribes while meeting our National obligation.

As Chairman of the Subcommittee on Water and Power, I can assure you that the recommendations of the Committee and your comments here today will receive most careful consideration. It is essential that any water resource development undertaken on the Reservations not be viewed solely as compensation for past omissions, but rather as a lasting investment in a resource and a people.

PREPARED STATEMENT OF HON GEORGE MILLER, MEMBER OF CONGRESS FROM CALIFORNIA, AND CHAIRMAN, SUBCOMMITTEE ON WATER AND POWER RESOURCES COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Mr. Chairman, I appreciate the hospitality you and Senator Johnston have shown in inviting the Subcommittee on Water and Power Resources to participate in today's joint hearings on the recommendations of the Garrison Unit Joint Tribal Advisory Committee.

Mr. Chairman, I ask unanimous consent that a copy of a photograph taken on May 20, 1948 be included in the record of today's hearing. The photograh, which is found in Marc Reisner's book Cadillac Desert, tells a poignant story about the manner in which our government has treated Indian tribes. The caption for this picture in Reisner's book reads as follows:

> George Gillette, chairman of the Fort Berthold Indian Tribe Business Council, weeps as he watches Secretary of the Interior J.A. Krug sign a contract whereby the tribe sells 155,000 acres of its reservation's best land in North Dakota to the government for the Garrison Dam and Reservoir Project on May 20, 1948. Gillette said of the sale: "The members of the Tribal Council sign the contract with heavy hearts . . . Right now, the future does not look good to us."

Mr. Chairman, the bleak predictions of Chairman Gillette in 1948 have all too sadly come true. The Three Affiliated Tribes of Fort Berthold have never recovered from the economic and social destruction of their reservation caused by the construction of Garrison Dam. Similarly, the Standing Rock tribe was wronged and cheated for the construction of the Oahe Dam and Reservoir.

The report of the Garrison Unit Joint Tribal Adsvisory Committee clearly documents the failure of our government to adequately compensate these tribes. I compliment the Members of the Committee for their hard work and sound judgement. I also would like to express my appreciation to Ann Zorn and Norman Livermore, who devoted extra time and attention to this matter during their service on the Garrison Diversion Unit Commission in 1984.

Mr. Chairman, I look forward to this opportunity to hear from the tribes and our other witnesses this afternoon.

George Gillette, chairman of the Fort Berthold Indian Tribe Business Council, weeps as he watches Secretary of the Interior J. A. Krug sign a contract whereby the tribe sells 155,000 acres of its reservation's best land in North Dakota to the government for the Garrison Dam and Reservoir Project on May 20, 1948. Gillette said of the sale: "The members of the Tribal Council sign the contract with heavy hearts. . . . Right now, the future does not look good to us." *(AP–Wide World Photos)*

For more than fifty years, the tiny man-made river in the foreground, the Granite Reef Aqueduct of the Central Arizona Project, has been viewed by Arizonans as the one thing that can save them from oblivion. In the next century, however, as seven states suck up their full share of the feckless and overappropriated Colorado River, the aqueduct may run as empty as the diversion canal on the right. *(Bureau of Reclamation)*

PREPARED STATEMENT OF ANN A. ZORN

I am Ann A. Zorn. I reside in Las Vegas, Nevada. In the fall of 1984 I was privileged to serve as a member of the Secretary's Garrison Diversion Unit Commission. I very much appreciate the opportunity to come before you today.

The Garrison Commission Report recognized that earlier federal moral and legal committments to North Dakota and the Indian tribes affected by the Garrison and Oahe dams had not been met. Mr. Norman Livermore and I were the commissioners most instrumental in calling for the creation of the Joint Tribal Advisory Committee to examine the Indian issues in greater detail than we were able to do. I support the conclusions and recommendations of the JTAC report of May, 1986, and I would like to tell you why I felt so strongly that JTAC should be created.

The testimony and background information gathered by the Garrison Commission made it clear that there was a federal obligation to North Dakota for the sacrifice of the Missouri River bottom lands. It was also clear that the Indian citizens of North Dakota shouldered a substantial portion of that sacrifice. All of the bottom lands (more than 150,000 acres) belonging to the Three Affiliated Tribes were inundated by the waters behind the Garrison dam and these acres constituted more than one third of all the land under Lake Sakakawea.

The bottom lands in the "Taking Area" were not just land owned by the tribes - they were the economic and social base of the tribes. The uplands offered as "in lieu" lands could not be counted as equivalent to the bottom lands for they could not support the same type of ranching and agricultural economy which the bottom lands provided. 96% of the families of the Ft. Berthold reservation lived along the river and had to be relocated. Maps show a concentration of homes in the bottom land area before the dam was built, but there is a widely dispersed pattern of residence after the people were moved to the uplands.

Unfortunately, there does not seem to be any "in lieu" solution for the social trauma these families and the tribes experienced when relocation scattered a previously concentrated and cohesive settlement, when schools, hospital, and health services disappeared or diminished, when distances between families and friends were magnified by the loss of bridges and roads. A reasonably self sufficient community of people was turned topsy-turvy and left to right itself without the promised assistance or means of establishing a new economic base forthcoming. Small wonder the pre-Garrison dam unemployment rate was only 5% to 6% but today has risen to 70% to 80%.

Mr. Livermore and I took the opportunity to visit the reservations in December of 1984. I spent the daylight hours of December 12th seeing some of the Ft. Berthold reservation by car and much of it from the air. I met with tribal elders, talked with people who are running the day to day programs at tribal headquarters, and listened to the experiences of those who had lived the story. When we left Minot for the long drive to the reservation I knew from the crunch of the ground underfoot that the temperature was close to zero. The snow covered landscape reminded me a little of Wisconsin or New Hampshire. But I also learned of folks who had to choose between telephones and heat during the long winters. More often than not they opted for the heat and had to forego the safety net of the communication line . Viewing the reservation from the air, my guides pointed out the old townsites and bridge locations that were now inundated. And I saw how the land areas were divided by the lake waters. "You can't get there from here" is the only way to describe the impact on the critical transportation system. I wondered briefly why the tribes did not utilize the recreational potential of the long shoreline spread out below us - until I learned that the tribes had not options there, but others did.

In searching my mind for a personal experience which I could relate to impact of the Garrison dam - some comparable occurance that would help me understand - the closest I could come was to remember the destructive nature of ill planned freeways which divided and conquered close knit ethnic neighborhoods in the New England area where we lived in the late 1950's and early 1960's.

I am including with my statement the short notes from which Mr. Livermore and I reported back to our fellow commissioners. I am pleased that there was unanimous approval of the indian issues recommendations included in the final report.

Again, I endorse the JTAC findings and recommendations. I ask that you adopt them and trust that implementation will not be too far in the future.

OBSERVATIONS ON VISITS TO INDIAN RESERVATIONS*

~~[illegible]~~ with inundation –

- ECONOMIC BASE IS GONE

Three Affiliated Tribes of Ft. Berthold

- * 8 towns flooded out
- * prime agricultural lands lost
- * bridge destroyed, hospital lost, transportation network decimated
- * land reduced to 423,000 acres (out of original 12.5 million; much of this was lost before 1900, but large amounts of valuable farmland was given over to homesteaders in 1910; Garrison inundated small amount of remaining bottomland)
- * infrastructure inadequately replaced
- * New Town stores owned and operated by non-indians
- * shoreline access denied to Indians; but given to non-Indians (for second homes)
- * authority to develop recreation potential of shoreline denied to Indians; but boat ramp sold to "a group of doctors"
- * unemployment before dam: 5-6%
- * unemployment today: 70 - 80%
- * alternate dam site had been offered by Indians

Few [illegible] of any economic base. . moved from [illegible] to [illegible] cash economy

Small ~~[illegible]~~ sized land holdings. -

Standing Rock Sioux

- * no help for Corps of Engineers in relocating (on short notice during severe winter)
- * pitiful relocation of towns
- * construction of substandard homes (small, one-room houses)
- * inadequate development of recreation sites (with excellent recreation sites just outside reservation to the south)
- * shoreline often consists of mudflats (which create dustbowls during dry weather)
- * excess lands never returned
- * drawdown of Lake Oahe (from combined irrigation from Garrison and Oahe) would increase mudflats, cause drinking water problems, could affect irrigation
- * Winter's Right Doctrine assures water to Standing Rock Sioux and all other downstream tribes (Standing Rock is one of twenty-six Sioux Nations)
- * Urge recommendation of Congressional oversight hearings on Indian water rights in Missouri River Basin

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* Notes from trip to Ft. Berthold by Ann Zorn and Standing Rock and Ft. Berthold by Ike Livermore; 12-12-84

PREPARED STATEMENT OF NORMAN B. LIVERMORE, JR.

Thank you for your letter of March 25 inviting me to present testimony at your oversight hearing which is being held to consider the recommendation of the Garrison Unit Joint Tribal Advisory Committee. I regret very much that a temporary indisposition prevents my appearing before you personally.

My interest in and concern for justice to Indians dates back many years, but was particularly activated by evidence presented by Indian Tribes at the Garrison hearings which were held in Washington and North Dakota in the latter months of 1984.

During the course of these hearings, it became clearly evident to me that the Indian Tribes most acutely involved, namely, the Tribes at the Fort Berthold and Standing Rock Reservations, were given grossly inadequate consideration in the then-proposed Garrison Unit legislation. Another Commission member, Anne Zorne, joined with me in evincing particular concern as to the Indians' plight. As a result, she and I took extra time to visit the Reservations; she to Fort Berthold and I to both Standing Rock and Fort Berthold.

The conditions observed at one or both of these Reservations were enough to cause tears. Some of them were:

- woefully inadequate housing;
- a tragically shattered road system;
- inadequate access to the shorelines of Lakes Oahe and Sakakawea;
- villages destroyed by inundation;

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*Statement by Norman B. Livermore, Jr., former member of the Garrison Diversion Unit Commission (1984); California State Secretary for Resources (1967-1974); Transition Team Leader, Environmental Protection Agency (1980) before the Joint Oversight Hearing of the Senate Committee on Energy and Natural Resources, the Senate Select Committee on Indian Affairs, and the House Committee on Interior and Insular Affairs, March 31, 1987

- a major highway bridge rendered useless; and,
- countless infrastructures destroyed.

In addition to these sad evidences of physical deterioration, we were made keenly aware of social tragedies and United States Government promises not kept:

- inadequate hospital and school facilities;
- inexcusable lack of notice of the effects of water impoundment;
- destruction of social structures;
- lack of respect for the burial place of the famous Chief Sitting Bull;
- promises unkept as to water and power rights; and,
- grossly inadequate payment for Indian lands condemned for the inundation area caused by the dams.

Overall, it appears to me that there have been two overriding inadequacies involved in the settlement that was proposed for the two reservations by the original Garrison legislation:

1. Compensation proposed for the Tribes was entirely inadequate when measured against the economic and social losses they have suffered.

2. In urging the original Garrison legislation, North Dakota leaders seem to express little, if any, concern for Indians' problems. Of all the massive evidence the 1984 Commission was presented with, urging the U.S. Government to "pay back the debt owing to the State of North Dakota," I can recall no evidence (other than that of Indians themselves) that specifically mention the Tribes' plight. In fact, I recall at one session when I posed the question, "You say a debt is due to the people of North Dakota; are not Indians part of the people?" The answer I got was: "Oh, we are not concerned about them. They are handled from Washington."

Mr. Chairman, I have read with approval the May 23, 1986, Final Report of the Garrison Unit Joint Tribal Advisory Committee, and I hope and trust that you and the Committees meeting here today will recommend its adoption in full.

I have noted Congressman Dorgan's February 28, 1985, statement at the Subcommittee Hearings on the Garrison Diversion Unit Commission's Recommendations, when he said: "I am pleased to see an underscoring of the fact that we do have a serious commitment to the Indian Tribes, and we can't keep putting it under the carpet and walking away from it."

Mr. Chairman, I would like to emphasize these same sentiments and strongly urge you to act on them.

PREPARED STATEMENT OF C. EMERSON MURRY

My name is C. Emerson Murry. At the request of the Secretary of the Interior, I served as Chairman of the Garrison Unit Joint Tribal Advisory Committee established to examine and make recommendations with respect to the effects of the impoundment of waters under the Pick-Sloan Missouri Basin Program (Oahe and Garrison Reservoirs) on the Fort Berthold and Standing Rock Indian Reservations. The Secretary's action implemented a recommendation in the final report of the Garrison Diversion Unit Commission established pursuant to public law 98-360, §207 of the 99th Congress. The charter and responsibilities of the Committee are included in the letter of transmittal in the Joint Tribal Advisory Committee Report.

The Committee spent many hours and days in public hearings in the State of North Dakota, on both reservations, and at central points within the State. All testimony was recorded. The staff of the Committee made an extensive search of both Congressional and Agency documents and communications, as well as of studies carried on prior to, during, and after the construction of the Oahe and Garrison dams. These hearings, searches, and studies resulted in the Committee concluding that the GDU Commission was entirely correct when it stated "Implementation of the Flood Control Act of 1944 had a significant impact on Indian tribes in North Dakota. The Commission received evidence that the Federal Government has not provided promised assistance to replace the economic base of the State and tribes."

You will note that the general direction of the recommendations is to simply replace what was destroyed by the creation of the two dams so that the tribes may obtain economic independence. No recommendation calls for a lump sum payment or per capita payments to the tribes.

There is no question that the construction of the two dams and the subsequent impoundment of waters destroyed the major economic base of both the Standing Rock and the Fort Berthold reservations. The remaining lands of the reservations simply could not support the ranching, farming, and gardening economies that were so important. In the case of the Fort Berthold reservation, these activities made it one of the few, and perhaps the only, economically self-sufficient reservation in the country. The lack of timber, water, and shelter in the upland areas to which tribal members were relocated further affected the economic loss, as well as having a major impact on the traditional way of life and the quality of life for all members. In the case of the

Fort Berthold reservation, the physical isolation of segments of the reservation caused by the rising waters of the impoundment severed family, tribal, and institutional support ties and facilities. The subsequent emotional impact of this abrupt and radical change cannot truly be quantified, but it was major, and its effect lasts until this day.

The Indians intensely feel that they were not compensated for the taking of their lands and the destruction of related benefits by the United States. Transfer of title to Indian lands to the United States was never really voluntary, since the Indians felt intimidated by the fact that construction of the dams had begun even before Indian lands were acquired. They recognized that the taking of their lands was inevitable. Assurances given both expressly and by implication by various federal officials that problems anticipated by the Indians would be remedied, raised expectations which, in many cases, were never fulfilled.

In some instances, not only was the existing economic base destroyed, but the potential for future expansion of this economic base was destroyed. For instance, when the fertile alluvial bottom lands of the Fort Berthold reservation were flooded by Lake Sakakawea, the tribes lost over 40,000 acres of potentially irrigable land. The costs of developing these irrigable lands was only a fraction of the costs required for developing remaining tribal lands that are believed to be irrigable. The difficulties of transportation between the divided segments of the Fort Berthold reservation because of lack of bridges further erodes the possibility of the extraction of natural resources such as lignite coal, and the establishment of processing or manufacturing industries.

The Committee found that the tribes are entitled to be made whole for their specific losses resulting from the two major impoundments, and for their loss of economic potential. Among the major recommendations of the Committee are that of the development of irrigation to support the farm and ranch economies; the return of excess lands currently held by the Corps of Engineers beyond that required for reservoir operation in order to develop a recreational potential on the reservation; replacement of infrastructure destroyed by federal action such as health care facilities, school dormitories, a bridge upon the Fort Berthold reservation to provide access between communities and central facilities, adequate secondary access roads, the replacement of primary care inpatient health facilities and outpatient services; access to a reasonable amount of Pick-Sloan Basin power on a preferential-right basis; a development of a municipal industrial rural and water systems; upgrading of replacement housing in both numbers and quality to provide the necessary level of comfort and as required by health needs; and the establishment of a compensation program to the tribes consistent with the value of the economic base that was taken from them for the impoundments.

In regard to the compensation program for the loss of economic base, two methods of calculation were presented to and recognized by the Committee as rational methods of calculating such compensation. The Committee recommended that such general compensation program be no less than the smaller compensation amount resulting from the application of the two methods.

I will not attempt to further detail the findings and recommendations of the Committee, as I believe them to be adequately explained within the Committee Report. It is my understanding that representatives of the two tribes will present specific programs and priorities which are consistent with the findings and recommendations of the Committee in meeting the justified entitlements of the tribes and the Indian citizens affected.

It is noted that, based upon the initial report of the Garrison Diversion Unit Commission, that the Garrison Diversion Unit Reformulation Act of 1946 included an authorization of $67,910,000 for the development of 17,580 acres of irrigation upon the two reservations, and the sum of $20,500,000 for municipal, rural, and industrial water systems as a partial recognition of tribal and Indian entitlement resulting from the two dams.

It is recognized that the costs in meeting these tribal entitlements is not small. I would note, however, that with the over $3 billion of flood control benefits to lower Missouri Basin states have resulted from the mainstream dams, coupled with increases in navigation benefits of over 3 million tons per year, and the advantages to them of major blocks of low cost preference power, that the cost of attempting to make the two tribes whole in a material way is, in fact, moderate.

I know I speak on behalf of all members of the Joint Tribal Advisory Committee when I urge the most serious consideration of the tribal needs and entitlements contained in the Report, and in the recommendations of the Committee.

PREPARED STATEMENT OF ROSS O. SWIMMER

Mr. Chairman and members of the Committees, I am pleased to present the views of the Department of the Interior on the recommendations of the Garrison Diversion Unit Joint Tribal Advisory Committee.

The Committee's report provides a wide variety of proposals for mitigating what the Indians of the Fort Berthold and Standing Rock Indian Reservations strongly believe are inequities borne by them due to the construction of the Oahe and Garrison Reservoirs of the Pick-Sloan Program. In our view, because Congress has taken steps to address some of these issues through the enactment of P.L. 99-294, actions to implement the Committee's recommendations should be taken largely in the context of the reformation of the Garrison Diversion Unit.

The Committee's report addresses ten items and provides recommendations for each Indian Tribe on each item. This statement addresses each of those items. Except where otherwise indicated. the Department has no position at this time on recommendations requiring legislation.

Item 1. Full potential for irrigation on the Reservations.

P.L. 99-294 authorizes the Secretary of the Interior to develop irrigation facilities for 17,580 acres of land in the Fort Berthold and Standing Rock Indian Reservations pending a determination by the Secretary of the suitability of the land for irrigation, and authorizes the appropriation of $67,910,000 for this purpose. The Committee's report recommends legislation that would provide for irrigation development beyond the 17,580 acres authorized by P.L. 99-294. The recommendation identifies 113,000 acres for development and would provide for funding capital costs, deferral of their repayment, and establishing preferential Pick-Sloan power rates for the irrigation development. We have not conducted studies to determine the irrigability of the additional lands in question, or whether the proposed development would be economically justified. In some instances, there are alternatives to irrigation development that yield a tribe a better return on its water resources.

It should be noted that the Committee based its recommendation on a finding that the lands identified some fifty years ago in the taking as having been suitable for irrigation were greatly understated when viewed in the context of technological improvements in irrigation since that time.

In any event, additional irrigation development beyond the 17,580 acres authorized by P.L. 99-294 would require further authorization by Congress. We also note that in light of budget constraints, the current Department budget request for FY 1988 does not provide for significant development of the Indian or non-Indian components of the Garrison Diversion Project. Finally, we point out that since the Tribes' reserved water rights have yet to be quantified, the Committee's recommendations for development of the irrigation potential do not necessarily reflect the Tribes' full water entitlement. (This is addressed further in our comments on item 5.)

Item 2. Financial assistance for on-farm development costs. The Committee's report recommends that all on-farm costs associated with the irrigation projects be included as capital costs and deferred under the Leavitt Act (25 U.S.C. 386a). If it is decided to implement this recommendation, P.L. 99-294 would have to be amended, or other authorizing legislation enacted, to the extent that deferral of the on-farm development costs associated with the Committee's recommendations is not already authorized.

Items 3. and 4. Development of shoreline recreation potential of Lake Sakakawea and Lake Oahe; and Return of excess lands. We would be interested in working with Congress to vest the tribes with an interest and corresponding management authority in those lands in their respective reservations which the Corps of Engineers does not need for project purposes. However, we have been informed by the Corps that it (the Corps) currently has no lands excess to project needs. Your Committees may wish to pursue this matter directly with the Corps.

In a related matter, whether the Standing Rock Sioux Tribe may lease its grazing rights to other parties seems to depend on whether that action is allowable under P L. 85-915 which provides that the Tribe "shall be given exclusive permission, without cost, to graze stock on the land between the water level of the reservoir and the exterior boundary of the taking area." The Comptroller General has interpreted acts with identical language (concerning grazing rights of other tribes) to preclude the leasing of the tribal grazing right on the basis that "exclusive permission" to graze stock is, in effect, a license and not a right. According to the Comptroller General, such a license conveys no interest in land but is a personal privilege which can only be enjoyed by the licensee. (Op. Comp. Gen. B-142250, July 25, 1960.) Since P.L. 85-915 apparently does not authorize the Tribe to lease its grazing rights, additional legislation would be needed. We believe that the tribe should be allowed to lease its grazing rights, subject to project purposes and relieve the United States from any liability arising therefrom.

Item 5. Protection of reserved water rights. The reserved water rights of the Tribes are not currently quantified. It is possible for quantification to be achieved through negotiation or litigation. We are not aware of any efforts underway either by the State or the Tribes to quantify the reserved water rights of the Tribes.

Item 6. Funding of all items from the Garrison Diversion Unit funds. Many of the items in the Committee's report are not the subject of P.L. 99-294. Therefore, P.L. 99-294 would need to be amended, or other authorizing legislation enacted, to the extent that the appropriations authorized are inadequate to cover the Committee's recommendations for the full development of irrigation potential on the reservations, as well as the development of municipal, industrial and rural water systems.

Item 7. Replacement of infrastructures lost by the creation of Garrison Dam and Lake Sakakawea and Oahe dam and Lake Oahe. The Committee recommends replacement of lost infrastructures including those relating to health, education, housing, and roads. We believe the need for the infrastructures so identified should be evaluated by the appropriate Federal agencies and included in the annual program and budget plans for each agency, if appropriate.

With reference to the specific request that the Bureau of Indian Affairs provide dormitories on the Fort Berthold Reservation, our figures for the current academic year show that only 57 students, rather than 97 cited in the report, are attending boarding schools. As there are reasons other than distance from existing day schools why students may be in a boarding situation, the number of students who would actually be housed in a dormitory on the reservation may be fewer. The Bureau would not recommend dormitory construction in two or more locations for so few students. While the initial construction cost is not high, there would be on-going requirements for additional staffing, counseling, programmatic and operations maintenance support which are not reflected in the report.

The report requests replacement or improvement of housing as the existing homes are not sufficiently insulated. We would note that the homes were built during a time when insulation standards were considerably below current practices. There are substantial funds available for weatherization of existing homes through the Department of Energy and through the oil overcharge settlements and the tribes can apply for these funds.

Item 8. Preferential rights to Pick-Sloan Missouri River Basin Power. The Committee's report recommends that both the Fort Berthold and the Standing Rock Reservations be assured of a firm supply of Pick-Sloan Basin Program power for purposes of municipal, rural, and industrial water system (M&I) and irrigation (both first lift pumping power and power for sprinkler pressurization).

Under P L 99-294, the Fort Berthold and Standing Rock Reservations are entitled to firm supplies of power for M&I. The Tribes would pay the Western Area Power Administration the wholesale firm power service rate which is currently about 7.4 mils per kwh, for M&I power. As to irrigation, under P L. 99-294, certain lands on the Standing Rock Sioux and Fort Berthold Reservations are authorized for development as irrigation areas of the Garrison Diversion Project, Pick-Sloan Missouri Basin Program, and therefore are entitled to a firm supply of irrigation power. However, it is the policy of the Bureau of Reclamation that power for authorized irrigation projects of the Pick-Sloan Missouri Basin Program will be provided only for first-lift pumping uses, not for sprinkler pressurization, unless otherwise specifically provided for by legislation. (The rate paid by irrigators for first-lift pumping power is the Bureau of Reclamation project use rate.)

Under the WEB Act (P.L. 97-273), the Secretary of the Interior, in cooperation with the Secretary of Energy, was authorized to make Pick-Sloan power available to five Indian tribes, including the Standing Rock Sioux Tribe. Pursuant to the WEB Act, the Departments of the Interior and Energy are providing Pick-Sloan power to the irrigation projects constructed for the tribes named in the WEB Act (including Standing Rock) for both first lift pumping and sprinkler pressurization uses. Those tribes pay the project use rate for first lift pumping power and the firm power service rate for sprinkler pressurization power. Pick-Sloan power for sprinkler pressurization for the additional irrigation facilities on the Standing Rock Reservation which are authorized to be developed under P.L. 99-294 may be made available to the Standing Rock Tribe under the WEB Act.

The Fort Berthold Reservation, however, is not named in the WEB Act, nor does any other legislation appear to provide it with a firm supply of Pick-Sloan power for sprinkler pressurization use. Thus, Fort Berthold appears to be entitled only to a firm supply of Pick-Sloan power for first lift pumping use. The Three Affiliated Tribes of Fort Berthold could seek power for sprinkler pressurization, at the firm power service rate, from the Department of Energy through the regular contractual process; however, we understand that no contracted power will be available until the year 2001. Thus, if the decision is made to assure Fort Berthold of power for sprinkler pressurization use, in our view, additional legislation would be needed.

Item 9. Additional financial compensation. In our view, the Committee's report does not provide adequate documentation to establish that the Tribes are entitled to additional financial compensation in the form of the substitute or replacement value of the economic bases lost as a result of the siting of Lake Sakakawea or Lake Oahe.

Item 10. Other items the Committee deems appropriate. Four subjects were included in this item:

A. The appropriation ceilings authorized in P.L. 99-294 are inadequate to construct the municipal, industrial, and rural water supply systems contemplated in the Committee's recommendations.

B. While the Department could take administrative action to seek a transfer of the interests of agricultural and ranch-related lenders on the reservations from the Farmers Home Administration (FmHA) to the Bureau of Indian Affairs credit program, the Department is not inclined to take such action. If the loans with FmHA are still viable, such a transfer is unnecessary. If the loans are not viable, it does not serve the best interests of the BIA credit program or the Indians served by it to assume responsibility for such loans and reduce our ability to make loans.

Recently, BIA and FmHA officials met with tribal representatives to discuss support for a program of farm loan refinancing on the Fort Berthold Reservation. Our agencies are reviewing a proposal under which the respective agencies would exercise authorities under existing laws and regulations to facilitate the refinancing of viable farming operations through private institutions.

C. The Department has no objection to the establishment of an "Indian desk" within the U.S. Army Corps of Engineers to assist in the resolution of Indian concerns resulting from the operation of the Missouri River reservoirs by the Corps. However, since this particular issue impacts the Corps, your committees may wish to pursue this matter directly with the Corps.

D. The Department is willing to take steps administratively to coordinanate its Fish and Wildlife and Law Enforcement programs with the

Standing Rock Sioux Tribe in order to protect the Tribe's hunting and fishing rights on the reservation in and around Lake Oahe.

The Department has not identified a schedule for implementing the non-legislative recommendations of the Committee. Such a schedule could be developed after further consultation with the Tribes.

This concludes my prepared statement. I would be happy to answer any questions you may have.

PREPARED STATEMENT OF BRIGADIER GENERAL CHARLES E. DOMINY

I am Brigadier General Charles E. Dominy, Division Engineer for the Missouri River Division of the U.S. Army Corps of Engineers.

I am pleased to appear before you today to discuss the Final Report of the Garrison Unit prepared by the Joint Tribal Advisory Committee. Our review of the report has not been completed. I will summarize our preliminary comments on items of direct interest to the Corps of Engineers. With your permission, within 30 days, we will submit to the Committees for the record additional comments on the final report.

BACKGROUND

The Flood Control Act of 1944 authorized the construction of five dams and reservoirs along the main stem of the Missouri River pursuant to the Pick-Sloan Plan. As certain Indian reservations adjacent to the projects would lose land to the flooding by the reservoirs, Congress authorized the acquisition of such lands and specified the compensation to be paid to the affected tribes and individual Indians. There are two laws of direct relevance to the matter at hand. One is Public Law 81-437, 63 Stat 1026 (October 29, 1949), by which the United States acquired lands of the Fort Berthold Reservation for the Garrison Project in North Dakota. The other is Public Law 85-915, 72 Stat 1762 (September 2, 1958), by which the United States acquired lands of the Standing Rock Sioux Tribe for the Oahe project in North and South Dakota. Both laws specified the compensation to be paid, and both laws completely extinguished the Indian interests in the affected properties, except for grazing privileges and mineral interests retained by the Standing Rock Sioux Tribe on the former Reservation lands. In 1962 grazing privileges were restored to the Three Affiliated Tribes in accordance with Public Law 87-695. In 1984, by Public Law 98-602, Congress restored the mineral rights of the Three Affiliated Tribes in the acquired lands of the Fort Berthold Reservation.

The Army Corps of Engineers manages the project lands acquired from these Tribes as well as other project lands acquired from Indians and non-Indians pursuant to the Flood Control Act of 1944 for the following purposes: flood control, hydropower operations, irrigation, navigation, recreation, and wildlife preservation.

We did not have an opportunity to participate in the preparation of the report by the Joint Tribal Advisory Committee. However, based on our preliminary review of the final report, we believe that a number of the recommendations have merit and will work with the Tribes to implement them. Others, though, would be difficult to implement under our existing authorities and mandates, and their economic feasibility has not been established.

Return of Excess Lands

The Committee recommends return of excess lands to the Tribes. We recently reviewed our landholding at both the Oahe and Garrison projects to ascertain whether we held land in excess to project needs. Considering the full array of project purposes served and the need for a buffer for wave action and shoreline erosion, we concluded that there are no lands within the Corps project boundaries which are excess to authorized project needs.

Development of Shoreline Recreation Potential

The Committee noted that there is considerable potential for recreation development and recommends additional recreation development by the Tribes. The Corps of Engineers is and always has been willing to participate with the Tribes in recreation leases and in development of recreation opportunities, as it does with other local entities, pursuant to Federal law and consistent with budget priorities.

Currently, we have four outstanding leases with the Three Affiliated Tribes for recreation purposes, as well as many recreation leases with other local non-Indian entities. Section 1125 of Public Law 99-662 transfers to the Three Affiliated Tribes the Four Bears Recreation Area at Lake Sakakawea which was developed at full Federal expense.

Indian Desk

Among the other items that the Committee deems important is the establishment of an "Indian Desk" within the Corps. We currently have an internal organizational capability to provide special emphasis on Indian affairs and will give this recommendation further consideration. Of course, the Joint Tribal Advisory Committee and other representatives of the Tribes are welcome to visit the Omaha District and Missouri River Division offices at any time to discuss their problems and needs and Corps authorities. They also would be welcome in the Office of the Chief of Engineers to discuss issues of mutual concern.

Hunting and Fishing Rights

Another item of importance to the Committee was protection of the Tribes hunting and fishing rights. As I already mentioned, there are no excess lands within the Corps project boundaries. Because of this and because of the Corps responsibilities to provide fish and wildlife recreation opportunities for general public use, the opportunities to modify jurisdictional prerogatives of the Tribes to regulate hunting and fishing will be limited at best. However, we are willing to coordinate with the Tribes to address hunting and fishing and other fish and wildlife concerns.

Mr. Chairman, this concludes my presentation. Thank you.

PREPARED STATEMENT OF EDWARD LONE FIGHT

Mr. Chairman Inouye, it is my pleasure to appear before your Committee and the other Committees represented here, regarding the report issued by the Joint Tribal Advisory Committee (JTAC) on May 23, 1986.

You have heard the testimony of Mr. C. Emerson Murry, and his colleagues, who served on the Joint Tribal Advisory Committee (JTAC). That federal commission has issued a thoughtful and considered report regarding the impacts of the Pick-Sloan Program on the Three Affiliated Tribes of the Fort Berthold Reservation. You have seen the video presentation portraying in stark terms the human costs associated with the removal and dispersion of the Tribal people in order to make way for the Garrison Dam.

This federal removal of some 480 tribal families--over 90 percent of the tribal population in the 1950s--from the five bottomland communities along the Missouri River has had disastrous and lasting adverse consequences for the Three Affiliated Tribes. This result should come as no surprise. It would come as no surprise to the Missouri River Basin Investigation (MRBI) team, the federal task force that through its experts in 1946-1947 evaluated the feasibility of the removal of the Three Affiliated Tribes in order to make way for the Garrison Dam. That Agency's thirty odd reports on the subject makes clear the hazards to the future tribal well-being if such a policy were adopted. It would come as no surprise--and it didn't--to the tribal leaders who foresaw the devastating consequences that would befall their people if they were forced to remove. These tribal leaders' stirring and emotion laden speeches in opposition to the injustice of the Garrison Dam are commemorated now among the other great speeches in Indian history. Finally, it would come as no surprise to the BIA, a federal agency that commiserated with the tribal people over their fate, but did very little else. The BIA's message to the tribal people was: reconcile yourself to the coming of the dam--your removal is inevitable.

However, the Three Affiliated Tribes did not view their removal as inevitable. As the MRBI reports, and other scholarly studies, show the Tribes, unlike the other Great Plains Tribes, were a village agricultural people that had succeeded by the 1940s in building a self-sufficient tribal economy on Fort Berthold. The bottomlands of the Fort Berthold Reservation, according to MRBI reports done near the time of the taking act, abounded in natural resources. The naturally fertile alluvial soils, the natural shelter for the Tribes' livestock herds, the abundant deposits of coal, the standing timber, the availability of seasonal fruits such as juneberries and choke cherries, the extensive habitat for wild game, as well as a plentiful supply of good water for domestic and stock watering purposes, all combined to provide a solid economic base that sustained the Tribes virtually independent of the non-Indian economy around them. The tribal people for the most part, according to the MRBI reports, through a tradition of self-reliance and hard work produced an income from their lands that made them economically self-sufficient. Those bottomlands were characterized by MRBI as constituting a natural *factory that provided for the present and future self-sufficiency of the Three Tribes as was contemplated by treaties between themselves and the United States.*

The basis for the Tribes' objection to their removal is as simple as it is direct and persuasive: there was no place for them to remove to. The Garrison Dam would flood the last remaining bottomlands on the reservation. Congress initially agreed with the Tribes. They would not have to remove unless a suitable replacement reservation was offered to them. Congress, in the 1947 War Department's Civil Appropriations Act, prohibited that agency from proceeding with the construction of the Garrison Dam until the War Department offered, under statutory terms, lands of sufficient quality and quantity to provide a permanent homeland for the tribes in exchange for their economic and social base that was to be taken as the site for the Garrison Dam. The Secretary of the Interior read Section 6 of that statute as requiring the federal government to compensate the tribes on "a replacement cost basis." The federal government was required to replicate, not only the land base, but the infrastructure necessary to the continued existence of Fort Berthold as an agricultural reservation as was contemplated by federal treaty and statute. See Report and Recommendations to the Commissioner of Indian Affairs on the Offer of Lieu Lands to the Indians of the Fort Berthold Reservation, North Dakota by the Honorable the Secretary of War, November 21, 1946.

If the statutory purpose and intent of Section 6 had been achieved the Tribes would likely not be here. However, the Secretary of War failed to find suitable replacement lands that met the statutory mandate. The War Department then persuaded Congress to eliminate the Indian clause limitation on the construction of the Garrison Dam. Congress, recognizing that a replacement reservation could not be provided, undertook to provide a cash equivalent of the economic and social base that accorded with the same standard of substitute or replacement value. The Missouri River Basin Investigation's had already described in depth and detail the complex and costly rebuilding and rehabilitation program that would be necessary if the tribal people were removed and they had to rebuild their tribal economic and culture life from "square one."

Let me emphasize here that the Tribes no longer had any choice but to remove--the only issues open for discussion with the Corps of Engineers was the timing and circumstances of that removal. Virtually no attention was paid to the MRBI recommendations regarding the steps the federal government had to take to ensure that Tribes were successfully reestablished on the high plains of the residual reservation.

Congress, recognizing that a replacement reservation could not be provided, undertook to provide the Tribes with the cash equivalent of their economic base which accorded with the same standard of substitute or replacement compensation. The Congressional intent in Pub. L. 81-437 to accord the tribes full indemnity value, as against mere fair market value, for the taking of their treaty protected economic base is clearly reflected in the legislative history of that statute. Congress recognized that the payment of fair market value, as if the tribes were mere private condemnees, would neither adequately compensate the tribes nor enable them to continue as a self-sufficient treaty protected tribal government. This recognition *is based expressly on the federal reports indicating that the residual lands of the reservation would be insufficient to support the existing ranching and farming industry of the tribes.*

Ultimately, however, Congress because of budgetary constraints failed to pay the Tribes compensation that accorded with the principle of substitute, or replacement, valuation. For example, the House of Representatives reported out its version of H.J. Res 33 that called for a payment of $17,105,625. This amount was acknowledged by the House as falling below the standard of replacement valuation, to the tribes. But $12.6 million was the amount that was offered by Congress, after final conference between the two Houses, to the Tribes on a "take it or leave it basis" of compensation. The Tribes, aware that they were to be removed in any event, and likely left destitute, reluctantly voted to accept the terms of the settlement imposed by the terms of Pub. L. 81-437 on March 15, 1950.

The Tribes were to be permanently reestablished, at the expense of the federal government, pursuant to Section 2 (b) and (c) of Pub. L. 81-437 on the residual lands of the reservation. The reconstruction of the Tribes' economic and community life was to be assumed as a direct federal responsibility. See, H. Rep. No. 544 at p.3. The reestablishment program had three aspects: (1) the reestablishment of the Tribes' real and personal property on the lands of the residual reservation; (2) the reestablishment of the tribal cemeteries, shrines and monuments; and (3) the reestablishment of Tribal buildings and facilities. See Cong. Rec. p. 8929 (July 6, 1949). The Commissioner of Indian Affairs was directed by the statute, to carry out the removal and relocation of the Tribes pursuant to a plan that was consistent with the purposes of the statute.

As a matter of fact, however, the official responsibility for developing and executing the removal plan devolved upon a Mr. Rex W. Quinn, the Agency Superintendent at the time. Quinn had a short time in which to develop and execute the removal plan, the gates of the Garrison Dam were to close in early 1953. Superintendent Quinn, in his 1951 plan, recognizes, as did the MRBI team, that the permanent reestablishment - absent a costly and complex rehabilitation program - of tribal members on the lands of the residual reservation was not possible. He candidly acknowledged that the residual lands were not of sufficient quantity or quality to support the replacement of the tribes livestock and ranching industry, the main stay of the tribal economy on the historic reservation. Quinn, therefore, directed his staff to counsel those tribal members that were young enough, and willing to do so, to relocate off the reservation, in urban areas, under the BIA's new employment relocation program. Quinn suggested that this approach may be consistent with the policy of termination of the reservations advocated by some people in the federal government.

As a practical matter, relocation under Quinn's plan meant the removal of tribal families to new homesites on the residual reservation. However, the lack of cheap available, and good, groundwater - as pointed out by the MRBI team - greatly limited the success of this endeavor. Further, the tribal members were unable to utilize the residual lands for agricultural purposes without large capital investment, new equipment and training that would allow them to adapt to the new agricultural environment. Additionally, the economic utilization of the fragmented heirship lands on the residual reservation would be impossible, Quinn recognized, absent a federally funded tribal land consolidation or new purchase program.

Tribal efforts to utilize a portion of the $7.5 million, payable to the tribes as compensation for economic recovery purposes, such as land consolidation, were frustrated by the federal policies at the time. The tribal proposals for economic development were rejected by the BIA unless the tribes were willing to accept termination--the ending of their federal wardship status--as a condition for the use of their monies for that purpose.

Some tribal members also opposed tribal utilization of those funds for economic development on the reservation. Those members both desired and needed those funds for their own subsistence. Those tribal funds, some $7.5 million plus 4 percent accumulated interest, were all paid out to tribal members on a per capita basis by 1955. A small amount, about $200,000, was retained for tribal administration purposes. Those per capita payments were generally spent by tribal members to pay for current living expenses, very little of that money was reinvested in durable goods or land.

Let me summarize the major points of the complex legal and social history of the removal of the Three Affiliated Tribes:

1. Congress recognized from the outset, through "lieu lands" mandate to the War Department, that the Three Affiliated Tribes were entitled to the replacement or substitute value of their economic base as the basis for just compensation.

2. Congress, realizing that a suitable replacement reservation could not be provided to the Tribes, undertook to provide the Tribes

with the cash equivalent of their economic and social base on the principle of substitute or replacement value.

3. Congress, because of budgetary and other pressures, failed to accord the Tribes this standard of compensation under the terms of the settlement act, Pub. L. 81-437.

4. The Three Affiliated Tribes' proposals to utilize the $7.5 million, payable to the Tribes as compensation for economic recovery purposes were frustrated by the Bureau of Indian Affairs policies at the time. All of the funds were expended by way of per capita payments to Tribal members to meet their subsistence needs.

5. The Bureau of Indian Affairs was unable to meet the statutory mandate of reestablishing the tribal people on the residual reservation lands because those lands could not support that population and sufficient funding was not available to reestablish those persons removed.

The JTAC's recommendations regarding just compensation, replacement of lost tribal infrastructure, and the limited development of the irrigation potential of the reservation, if technically and economically feasible, lay the basis for a genuine and sound tribal economic and social recovery plan. Let me emphasize at the outset that the Three Affiliated Tribes agree with the JTAC report that there should be no per capita payments to any tribal members. The Tribes recognize their affirmative obligation to present a focussed, and realistic program for the implementation of the JTAC recommendations on the Fort Berthold Reservation. No amount of money unless it is wisely programmed for tribal needs over a substantial time horizon will allow the recovery of the Three Affiliated Tribes from the impacts of the Garrison Dam.

There must be a careful and considered blending of a realistic amount of just compensation, the replacement of lost social and physical infrastructure, and possibly some irrigation development on the reservation. Such a judicious blending will set the stage for the sustained tribal economic and social recovery from the impacts of the Garrison Dam. The Three Affiliated Tribes have four goals through the implementation of the JTAC recommendations:

1. the restoration of tribal community well-being;

2. the assurance of tribal governmental integrity and stability;

3. the eventual achievement of economic parity with the non-Indian communities surrounding the reservation; and

4. the elimination of dependence.

I will briefly address the JTAC's core recommendations:

1. Just Compensation

The JTAC recommended that the Three Affiliated Tribes be awarded $178.4 million as the substitute, or replacement, value of their economic base that was taken as the site for the Garrison Dam. The Three Affiliated Tribes are aware that only a focussed and fiscally restrained Tribal economic recovery plan will serve the JTAC's purpose as well as the long range needs of the Three Affiliated Tribes. I will briefly outline the elements of a plan that the Tribes believe will work on Fort Berthold. A Tribal Economic Recovery Fund should be established, under the supervision of the Secretary of Interior, as the means to establishing self-sustaining tribal and individual enterprises that will generate both jobs and the enhancement of underlying tribal assets. Over the long-term this will generate a new *and diversified economic base for the Tribes. This fund is necessary in order to ensure a sustained and steady flow of funds to nurture the start up and early operation of these new business enterprises. The Tribes acknowledge that there are social and educational barriers to be overcome. However, through the wise utilization of of tribal Community Development Corporations (CDC's) each of the five tribal segments would be eligible to apply for assistance from the Economic Recovery Fund.*

2. *Replacement of Lost Tribal Infrastructure*

The JTAC recommended the replacement on Fort Berthold of certain critical tribal physical and social infrastructure lost to the creation of the Garrison Dam: tribal health care facilities, school dormitories, a bridge for access between the communities and central facilities and adequate secondary access roads. The Tribes believe that these are critical elements and we are working, under existing law and authority to have the Bureau of Indian Affairs (BIA), Indian Health Service (IHS) and other federal agencies, review and evaluate these tribal needs. The Tribes may find it necessary to seek additional Congressional authority if the responsible federal agencies find they cannot respond to these critical needs under existing law.

However, one JTAC recommendation that undoubtedly will need Congressional authority for implementation is the award of a meaningful tribal preference right to Pick-Sloan Missouri River Basin Power. Our information from the federal utility marketing agent involved, the Western Area Power Authority (WAPA), is that Congressional authorization will be a necessary prerequisite for the small set aside of preference power to meet the full load domestic and municipal needs of the Tribes. Congressional action will also be necessary to provide for the transmission costs of such power from the Garrison power plant to the tribal homes and facilities on the reservation.

Irrigation Development on Fort Berthold

The JTAC recommended that 30,000 acres of reservation lands be developed for irrigated agricultural use in order to replace the irrigable land lost to Garrison. However, the implementation of this recommendation is not requested by the Tribes until certain technical and economic feasibility issues regarding irrigation are resolved by the Bureau of Reclamation in FY 1988.

Mr. Chairman, the Three Affiliated Tribes have sacrificed a great deal for the success of the Pick-Sloan Program. But they are ready, with Congressional assistance, to go forward with a economic recovery plan that will ensure the future economic growth and eventual independence of the Tribal people on Fort Berthold.

This concludes my testimony and I would be happy to respond to any questions you may have.

PREPARED STATEMENT OF ALLEN WHITE LIGHTNING

Respected Committee members, the Standing Rock Sioux Tribe of North and South Dakota hereby presents the following positions and documents pertaining to the Final Report of the Garrison Unit Joint Tribal Advisory Committee and related issues. There are five major areas of concern. These are summarized below.

1. The Tribe supports the Garrison Unit Joint Tribal Advisory Committee Final Report recommendations 1-10, with the exception of irrigable acres. In particular, the Tribe places a high priority on recommendation finding number seven; replacement of tribal infrastructure lost by the impoundment of the Missouri River, and number nine, just financial compensation for the economic loss incurred by the Tribe as the result of the impoundment of the Missouri River.

2. Reserved water rights. The Standing Rock Sioux Tribe, notwithstanding any part of Public Law 98-360 or any part of the Final Report of the Garrison Unit Joint Tribal Advisory Committee, does not accept any diminishment of the quantity of water from the Missouri River which the Tribe may beneficially use pursuant to the Winters doctrine or any rights we have under federal law existing and consistent with United States treaty

commitments with the Tribe. The Tribe further holds the principle that water in sufficient quantities is inseparable from the principle of further development to the Tribe and its people. Integral with the above is that the Winters reserved water rights held by the Tribe are exempt in whole and in part from any and all provisions of the so called "McCarran Amendment."

3. Participation in revenues from hydroelectric energy marketings. The Tribe finds it particularly unconscionable that we have been wholly excluded from revenue benefits resulting from the marketing of hydroelectric energy generated by the Oahe Dam. Even the State of North Dakota has now concluded that, and we quote, "the losses suffered by Indian citizens upon the Standing Rock Reservation were inordinately severe." The massive economic and social damage caused by the impoundments requires that the Tribe should participate and benefit from revenues resulting from the marketing of power from the Oahe Dam.

4. Irrigation. The Tribe holds that the 2,380 irrigable acres identified in P.L. 99-294 does not represent the potential total irrigable acres on the Reservation. Future irrigable acres are being identified by ongoing soils investigation.

5. Water Code. The Tribe's efforts to manage tribal water resources are impeded because of an Interior Department

moratorium on approval of tribal water codes. This moratorium should be lifted and the Tribe's water code approved.

6. Water Resources Funding. The Bureau of Indian Affairs is holding the Tribe hostage by severely reducing water resources funding in budgeted line items unless the Tribe initiates a negotiation process in compliance with the Bureau's Indian water policy. Provisions should be made which provide for an even-handed approach to Bureau funding tribal water management.

Charles W. Murphy
Chairman
Standing Rock Sioux Tribe
Fort Yates, North Dakota 58538

March 31, 1986

Congressman George Miller
U.S. House of Representatives
2228 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Miller:

The Standing Rock Sioux Tribe respectfully requests that when the House takes floor action on the Garrison Diversion legislation, specific provisions be made to address the serious problems caused by the Pick-Sloan Development Plan for the Missouri River Basin. The legislation reported to the Floor does not do this.

In the forty years since the passage of the 1944 Flood Control Act, water development on the Standing Rock Reservation was never undertaken in any meaningful way. Yet, our contribution to National Projects were far greater than any benefits that we have received or could receive.

The Oahe Dam and Reservoir Project, authorized by the Flood Control Act, had and continues to have a great impact on our members and our reservation. The Standing Rock Sioux Tribe has never fully recovered from the devastating consequences of that Act. Promises and benefits made pursuant to P.L. 85-915 have never been fulfilled but we are expected, once again to contribute to the benefit of the National Interest.

Twenty-five percent of our tribal members were forced to relocate out of the fertile bottomlands, which provided not only an economic but social growth as well. Fifty six thousand acres were condemned by the U.S. Army Corps of Engineers for the benefit of Oahe Reservoir. Prior to the Oahe Reservoir, the Standing Rock Sioux membership were self-sufficient. Now our people are in sorry economic condition and afflicted with dependency. To date, our people have found daily living a struggle because of the man-made catastrophe that has befallen them. Utilizing any social or economic indicator used to measure poverty and dependency, our people fall in the lowest category. Rarely reaching "old age" as measured by non-Indian standards.

Attached is Tribal Resolution No. 28-86, adopted by the Standing Rock Sioux Tribe which is the position of this Tribe. It addresses and clarifies our treaty rights on water: page 3, Section 1(d), of your bill.

Office Phone 854-7231

> "Nothing in this Act shall be deemed to diminish the quantity of water from the Missouri River which the State of North Dakota may beneficially use, pursuant to any right existing immediately before the date of enactment of this act and consistent with the treaty obligations of the United States".

It is essential for these provisions to be part of the Garrison Legislation in order to secure the continued support of the Standing Rock Sioux Tribe. If proper address to the serious injustices visited against our Tribe is not done in this piece of legislation which amends the Pick-Sloan Missouri Plan, then when will it be done?

The Standing Rock Sioux Tribe will oppose any major legislation in the Pick-Sloan Missouri Basin Plan which does not address the serious injustice visited against our Tribe.

We look forward to your support of the beginning of an amicable effort to resolve our conflicts regarding tribal water rights, predicated, nevertheless, upon full recognition of our treaty rights.

Sincerely,

Charles W. Murphy, Chairman
Standing Rock Sioux Tribe

RESOLUTION NO: 28-86

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934 with the exception of Article 16 and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council, and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1(a), (c), (g), (h), (j), (m), (o), and (q) is herein empowered to negotiate with the Federal, State, local governments and others on behalf of the Tribe; is empowered to promote and protect the health, education and general welfare of the members of the Tribe; is empowered to encourage and foster the arts, crafts, traditions, and culture of the Sioux Indians; is further empowered to authorize or direct subordinate boards, committees, or tribal officials to administer the affairs of the Tribe and to carry out the directives of the Tribal Council; is authorized to manage, protect and preserve the property of the Tribe and the wildlife and natural resources of the Standing Rock Reservation; is further empowered to engage in any business that will further the economic development of the Tribe and its members; is authorized to safeguard and promote the peace, safety, morals, physical, and general welfare of members of the Tribe and is empowered to employ consultants for the protection and advancement of the rights and property of the Tribe and its members; and

WHEREAS, the entire Standing Rock Reservation had been destroyed by the development of the Oahe Reservior through Public Law 85-915 and that it is the intent of the Standing Rock Sioux Tribal Council to seek development reparations from the reauthorization of the Garrison Diversion Project as this project also has a tremendous impact upon the future water and development needs of the Reservation; and

WHEREAS, the Congress of the United States did have legislation introduced through the North Dakota congressional delegation on December 3rd, 1985 identified as H. R. 1116, the Garrison Diversion Reauthorization Act of 1985, which provides specific provisions directed to the State of North Dakota only with very little provided to the Standing Rock Sioux Indian Reservation; and

WHEREAS, the Standing Rock Sioux Tribal Council is continually interested in any alternative methods available to improve and re-develop the distruction imposed upon the Standing Rock Reservation by the United States Congress to take more land in the name of the " national interest", and

NOW THEREFORE BE IT RESOLVED that the Standing Rock Sioux Tribal Council does hereby strongly urge the inclusion into the H.R. 1116 or its replacement legislation to reauthorize the Garrison Diversion Project a strong provision specifically addressing the Standing Rock Sioux Reservation to be as follows:

"SECTION 1. PURPOSE AND AUTHORIZATION.

The first section of the Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) is amended by striking out "That" and all that follows down through the period at the end of such section and substituting:

RESOLUTION NO: 28-86
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"Section 1. (a) The Congress declares that the purposes of this Act are to:

"(8) Assist and preserve the Standing Rock Reservation and its specific water rights as set forth in Treaty of Fort Laramie of April 29, 1868, by the commitments and guarantees provided for by the Congress of the United States;"

and that, the additional Section entitled, STANDING ROCK SIOUX RESERVATION be be hereby added to the H. R. 1116 to be:

SECTION 9. STANDING ROCK SIOUX RESERVATION.

"BE IT FURTHER PROVIDED that, as a part of the Garrison Diversion Unit Project Reauthorization, the Congress of the United States shall make the following commitments and guarantees to the Standing Rock Sioux Tribe of North Dakota and South Dakota:

1. The Project shall not interfere with, diminish, or take away from the Standing Rock Sioux Tribe, its Treaty reserved rights to the use of water in the Missouri River and its tributaries, and guarantees to the Standing Rock Sioux the the quantity of water necessary to meet the full water requirements to irrigate 303,650 acres at a rate of 4.35 acre-feet per acre, totaling 1,320,870 acre-feet annually within the Standing Rock Reservation;

2. Congress shall provide to the Standing Rock Sioux Tribe all necessary funding for the development of irrigation projects on the Standing Rock Reservation along with all the on-farm development costs;

3. Congress, by this Act, provides to the Standing Rock Sioux Tribe the preferential right to receive for irrigation, industrial, domestic, and municipal purposes the Pick-Sloan Missouri River Basin Power;

4. Congress, moreover, shall provide for the Standing Rock Sioux

sufficient funding to replace the lost infrastructure stemming from the construction of the Oahe Dam and Lake Oahe;

5. Congress will authorize the development of and funding for the full potential for Shoreline recreational facilities on Lake Oahe that are within the Standing Rock Reservation;

6. Congress directs the reconveyance in trust to the Standing Rock Sioux Tribe of all excess lands that were taken in connection with the Oahe Dam and Reservior;

7. Congress shall provide all additional financial compensation with applicable annual interest rates to make restitution to the Standing Rock Sioux Tribe for the losses it has sustained through the structures on the Missouri River which were built and operated pursuant to the Pick-Sloan Missouri River Basin Project;

8. Congress shall provide to the Standing Rock Sioux Tribe a "block of Power" necessary to continue with the existence of the Standing Rock Reservation for the purposes of domestic, industrial, economical, and municipal uses;

9. Congress shall return to the Standing Rock Sioux Tribe full ownership to the bed of the Missouri River;

10. Congress, by this Act, declares inapplicable to the Standing Rock Sioux Tribe the provisions of 43 U.S.C. 666, the McCarran Amendment; and

11. Congress declares that all that part of Lake Oahe and the shore line of that lake within the Standing Rock Reservation is under the exclusive control and jurisdiction of the Standing Rock Sioux Tribe,

Resolution No: 28-86

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including, but not limited to, hunting, grazing and fishing within the Reservation."

BE IT FURTHER RESOLVED that the United States Congress be urged to provide the necessary Authorizations for Appropriations of funds to carry out the provisions established in Section 9 of the H.R. 1116 or its replacement.

BE IT FURTHER RESOLVED that the Chairman or his authorized representative(s) be instructed to provide all necessary testimony in support of the STANDING ROCK SIOUX RESERVATION provision in this legislation and that the congressional delegation be contacted to provide support of this amendment.

BE IT FURTHER RESOLVED that the Chairman and the Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe

CERTIFICATION

We the undersigned Chairman and Secretary of the Tribal Council do hereby certify that the Tribal Council is composed of 17 members, of whom 15, constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened, and held on the 19th day of February, 1986, and that the foregoing resolution was duly adopted by the affirmative vote of 14 members, with -0- members opposing, and with 2 not voting. The Chairman's vote is not required except in case of a tie.

Dated this Nineteenth day of February, 1986.

Charles W. Murphy, Chairman
Standing Rock Sioux Tribal Council

ATTEST:

Perry Many Wounds, Secretary
Standing Rock Sioux Tribal Council

OFFICIAL SEAL

THREE AFFILIATED TRIBES • FORT BERTHOLD RESERVATION
Mandan, Hidatsa, and Arikara Tribes
TRIBAL BUSINESS COUNCIL
P.O. Box 220 • New Town, North Dakota 58763 • (701) 627-4781

Alyce Spotted Bear
Tribal Chairman

Gordon Blake
Vice Chairman
West Segment

John Charging
Secretary
North Segment

Paul Good Iron
Treasurer
West Segment

Pete Coffey
East Segment

Donald Malnourie
East Segment

Tillie Walker
West Segment

Ernest Stone
South Segment

Edmund White Bear
East Segment

Marie D. Wells
Northeast Segment

Dennis Huber
South Segment

MEMORANDUM

TO: *The Hon. George Miller, Chairman*
Subcommittee on Water and Power Resources

FROM: *Alyce Spotted Bear, Madam Chairman*
Three Affiliated Tribes of the
Fort Berthold Reservation

SUBJECT: *Suggested Legislative Specifications Re Implementation of Joint Tribal Advisory Committee (JTAC) Recommendations for the Fort Berthold Reservation*

DATE: *December 17, 1986*

LEGISLATION

JTAC Recommendations #1 & 2.

The JTAC recommended development of an initial 30,000 acres on Fort Berthold Reservation out of the 107,000 acres identified as having the potential for irrigation. The Committee further recommended that the Secretary of Interior proceed immediately with the Six Mile Creek and Lucky Mound projects totaling 15,200 acres of potentially irrigable land and that on-farm development and capital costs be deferred under the Leavitt Act. HR 1116 authorized projects at Six Mile Creek and Lucky Mound only up to a total of 15,200 acres subject to a Secretarial finding of irrigability but the legislation did not address development and capital costs deferral or the additional 14,800 acres.

The Tribes, their consultants and the Bureau of Reclamation have been working together to determine the irrigability of these project lands and to assess the economic feasibility for Indian farmers and ranchers of such agricultural land, once irrigated, with its additional development and capital costs. It appears that only approximately 12,000 acres will prove irrigable and that economic feasibility, if achievable, would at least be *contingent upon deferral of development and capital costs under Leavitt. The Bureau of Reclamation may be willing to recommend that deferral be authorized by Congress and that some or all of any additional costs be covered by the Bureau's Regional Indian Account. Further, if it is determined that such irrigated agricultural lands will not be economically feasible enterprises under any circumstances, the Bureau may be prepared to include in its report appropriate recommendations for alternative uses of authorized funds. In such case, the Tribes will be prepared to propose as an alternative an overall economic development plan for the Reservation as partial compensation to the Tribes (see also Recommendation #9 below). Such alternative plan would require Congressional authorization.*

The Tribes Recommend:

- *Legislation authorizing deferral of development and capital costs be initiated now. If the Committee wishes to avoid permanent, universal deferral for on-reservation development and capital costs under Leavitt, a project specific amendment to Section 5(e) of PL 89-108 would be appropriate. Such amendment should also provide authority for the Secretary to approve additional projects and costs deferral (or additional MR&I expenditures) for Fort Berthold, up to the 15,200 acre (or the pro rata share of authorized funding) limits, if less than the allowable acreage for the authorized projects is determined to be irrigable.*

- *If it is determined that economic feasibility cannot be anticipated, even with cost deferral, legislation should then be initiated to amend Section 5(e) of PL 89-108 authorizing alternative use of the pro rata share of authorized funds for an overall economic development plan submitted by the Tribes for approval by the Secretary. The Tribes will make a specific legislative recommendation to the Committee if such determination is made.*

JTAC Recommendation #5.

HR1116 addresses reserved water rights in regard to Indian irrigation and MR&I. The Tribes make no recommendation at this time regarding any economic development plan or project requiring substantial withdrawals for off-Reservation use.

JTAC Recommendation #6.

In regard to the JTAC MR&I recommendations, HR1116 authorizes $20.5 million for such systems on the three Reservations. The Tribes' experts are reviewing water system needs of various Reservation communities and homesteads. It is already clear that the current authorization will not meet the immediate public health needs of Fort Berthold, much less all three Reservations.

The Tribes Recommend:

- *Section 7(c) of PL 89-108 be amended to authorize*

> *appropriations in excess of the $20.5 million limitation based upon the findings of the Committee regarding minimum, immediate public health needs (the Tribes' experts will submit relevant information for Committee hearings) and further providing that the need for such appropriations may be offset by the diversion of appropriated funds from Indian irrigation projects as recommended in regard to Recommendation #1 above.*

JTAC Recommendation #8.

The JTAC recommended that the Secretary make available an allocation of Pick-Sloan preference power sufficient to meet the energy related needs of the Reservation, not to exceed 10 megawatts (excepting authorized irrigation and MR&I projects) to be delivered to the Tribes at no cost. Consultation with utility representatives and public utility commission officials has made clear that no such preference allocation is anticipated at this time and that the available utility marketing plan for inclusion of such preference allocation is the 1990 plan.

The Tribes Recommend:

- *Section 6 of PL 89-108 be amended to direct the Secretary of Interior to ensure the delivery, at no cost to the Tribes of an allocation of up to 10 megawatts of Pick-Sloan power on a preference basis. Further, the amendment should provide that actions s may be necessary by the Secretary or the Secretary of Energy to ensure such allocation at no cost to the Tribes may be taken notwithstanding any limiting provisions of the Department of Energy Authorization Act or other applicable statute. The Secretary of Interior should be required to ensure the delivery of such power no later than the implementation of 1990 utility marketing plans.*

JTAC Recommendation #9.

The Tribes Recommend:

- *The enactment of "the Three Affiliated Tribes Compensation Act of 1987". The Act should authorize cash and in-kind compensation to be made available to the Tribes over ten years by the Secretary of Interior with a total compensation value of no less than $178.4 million. The Tribes request that such compensation be authorized not on a per capita basis but in fulfillment of an overall economic development plan to be submitted by the Tribes for approval by the Secretary. Such plan would be developed with the purpose of enabling the Tribes and tribal members to return to the economic self-sufficiency they enjoyed before their lands were taken. The Act should further provide for amendments to the plan, as appropriate, upon approval of the Secretary.*

JTAC Recommendation #10(a).

See comments regarding JTAC Recommendation #6 above

COMMITTEES FINDINGS AND REPORT

JTAC Recommendation #1.

The Committee should, based upon its findings, endorse the treatment of land acquisition costs associated with purchasing fee patented land as project costs.

The Committee should, based upon its findings, recommend that the Bureau of Indian Affairs or Bureau of Reclamation assist the Tribes in the maintenance, operation and replacement of project structural components.

The Committee should indicate in its Report that, if irrigated agricultural lands for the authorized projects are determined not to be economically feasible, the Committee will consider legislation to provide for alternate use of the pro rata share of project funds for an overall economic development plan for the Reservation.

JTAC Recommendations #3 & 4.

The Committee should urge the Corps of Engineers to take immediate action to restore excess lands above the maximum position level of the reservoir to the Tribes subject to easements for project purposes and further subject to hold harmless, salvage rights and fair compensation protections for valid, current, private leases upon transfer to Tribal control.

JTAC Recommendation #7

Citing Committee findings and testimony before its hearings, the Committee should, in its Report, urge the Banking, Education and Labor, Energy, and Transportation Committees to review and take prompt appropriate action to implement JTAC Recommendations 7 (a), (b), (c), (d), (e).

JTAC Recommendation #10 (b).

The Tribes are currently pursuing the transfer of interest of lenders on the Reservation with FmHA and BIA and will report progress at Committee hearings or for the Record.

Finally, we would raise concern regarding legislative framework and process. It would make procedural sense to incorporate the amendments to PL 89-108 which we have suggested into the legislative vehicle we suggest for cash compensation to the Tribes. We are concerned that such incorporation may encourage the unacceptable concept of "offsetting" program and project costs against any authorized compensation. Second, we are concerned that the legislative process for a freestanding compensation Act will be lengthy. Several of our suggestions for amendments to PL 89-108 are timely so we would hope that the Committee could consider attaching them, if germane, to a water and power resources legislative vehicle that is moving forward.

Thank you for your continuing interest in the Three Affiliated Tribes and for this opportunity to make suggestions.

ONE HUNDREDTH CONGRESS

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GENERAL COUNSEL

RICHARD AGNEW
CHIEF MINORITY COUNSEL

October 3, 1986

The Honorable Donald P. Hodel
Secretary of the Interior
Washington, DC 20240

Dear Mr. Secretary:

The Garrison Unit Joint Tribal Advisory Committee submitted its final report on the Standing Rock Sioux and Fort Berthold Indian Reservations on May 23, 1986. The report includes recommendations which undertake, as recommended by the Garrison Diversion Unit Commission, "to find ways to resolve inequities" borne by the tribes as a result of construction of the mainstem Missouri River reservoirs.

I am not aware that the Department has taken any action regarding these recommendations, some of which will require enactment of legislation before they can be implemented. I would appreciate your cooperation in providing the following:

1. An itemized listing of all the recommendations of the Joint Tribal Advisory Committee, clearly indicating which require legislation, and which can be implemented administratively by the Department;

2. The Department's schedule for implementing the non-legislative recommendations of the Committee; and,

3. If there are any non-legislative recommendations which the Department decides should not be implemented, the reasons for these decisions should be explained.

For Committee recommendations requiring legislation, I would appreciate your cooperation in providing the Subcommittee with a draft bill.

Thank you for your attention. I look forward to your prompt reply.

Sincerely yours,

George Miller

GEORGE MILLER, Chairman
Subcommittee on Water and
Power Resources

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 21 1987

April 20, 1987

Honorable George Miller
Chairman, Subcommittee on Water
and Power Resources
Committee on Interior and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Miller:

The Department has completed its review of the findings and recommendations in the Garrison Unit Joint Tribal Advisory Committee report. Secretary Hodel asked me to respond to the specific points raised in your letter of October 3, 1986.

The Committee's report provides a wide variety of recommendations with respect to the effects of the impoundment of waters under the Pick-Sloan Missouri Basin Program (Oahe and Garrison Reservoirs) on the Fort Berthold and Standing Rock Sioux Indian Reservations. In our view, because Congress has taken steps to address some of the inequities suffered by the Tribes through the enactment of P.L. 99-294, actions to implement the Committee's recommendations regarding further mitigation measures for the Indian communities should be taken largely in the context of the reformulation of the Garrison Diversion Unit.

The Committee's report addresses ten items and offers recommendations for each Indian Tribe on each item. As you requested, we have addressed each item in the Committee's report according to: (i) whether the recommendation could be achieved administratively and, thus, could be considered in the Department's regular budgetary process each year; or (ii) whether the recommendation would require amendment of P.L. 99-294 or enactment of other legislation in order to be implemented. Except where otherwise indicated, the Department has no position at this time on recommendations requiring legislation.

Item 1. Full potential for irrigation on the Fort Berthold and Standing Rock Indian Reservations. P.L. 99-294 authorizes the Secretary to develop irrigation facilities for 17,580 acres of land within the boundaries of the Fort Berthold and Standing Rock Indian Reservations, and further authorizes the appropriation of $67,910,000 for this purpose. The Committee's report recommends legislation that would provide for irrigation development beyond the 17,580 acres authorized by P.L. 99-294. The recommendation identifies 113,000 acres for development and would provide for funding capital costs, deferral of their repayment, and establishing preferential Pick-Sloan power rates for the irrigation development. The Department has not conducted studies to determine the irrigability of the additional lands in question, or whether the proposed development would be economically justified. In some instances, there are alternatives to irrigation development that yield a tribe a better return on its water resources.

In any event, additional irrigation development beyond the 17,580 acres provided for in P.L. 99-294 would require further authorization by the Congress. We should also note that in light of budget constraints, the current Department budget request for FY 1988 does not provide for significant development of the Indian or non-Indian components of the Garrison Diversion Project in the immediate future.

Finally, we point out that since the Tribes' reserved water rights have yet to be quantified, the Committee's recommendations for development of the irrigation potential do not necessarily reflect the Tribes' full water entitlement. See our response to Item 5.

Item 2. Financial assistance for on-farm development costs. The Committee's report recommends that all on-farm costs associated with the irrigation projects be included as capital costs and deferred under the Leavitt Act. If a decision is made to implement the recommendation, P.L. 99-294 would have to be amended, or other authorizing legislation enacted, to the extent that deferral of the on-farm development costs associated with the Committee's recommendations is not already provided for.

Items 3. and 4. Development of the shoreline recreation potential of Lake Sakakawea and Lake Oahe; and Return of excess lands. The Department would be interested in working with Congress to vest the Tribes with an interest and corresponding management authority in those lands, within the exterior boundaries of the respective reservations, not needed by the Corps of Engineers for project purposes. However, we have been informed by the Corps that it currently has no lands excess to project needs.

The Committee also touched upon the inability of the Standing Rock Sioux Tribe to lease its grazing rights on land controlled by the Corps of Engineers. Whether the Tribe may lease its grazing rights to other parties seems to depend on whether that action is allowable under P.L. 85-915 (Act of September 2, 1951). That Act provided that the Tribe "shall be given exclusive permission, without cost, to graze stock on the land between the water level of the reservoir and the exterior boundary of the taking area." The Comptroller General has interpreted acts with identical language concerning grazing rights of other tribes to preclude the leasing of the tribal grazing right on the basis that "exclusive permission" to graze stock on the lands is, in effect, a license, not a right.

According to the Comptroller General, such a license conveys no interest in land but is a personal privilege which can only be enjoyed by the licensee. (Op. Comp. Gen. B-142250, July 25, 1960.) If P.L. 85-915 does not authorize the Tribe to lease its grazing rights, additional legislation would be needed. We believe that the Tribe should be allowed to lease its grazing rights, subject to project purposes, and relieve the U.S. from any liability arising therefrom.

Item 5. Protection of reserved water rights. The Committee recommends constructing irrigation and municipal water use projects to protect the Tribes' water rights. However, as noted above, the Committee's recommendations do not necessarily reflect the Tribes' lawful water entitlements, which are not currently quantified. It is possible for quantification to be achieved through negotiation or litigation. The Department operates a continuing program to quantify and protect tribal water rights through negotiation and/or litigation, which the Tribes may take advantage of; however, participation is contingent upon tribal/local interests. The Department is not aware of any efforts underway either by the State or the Tribes to quantify the reserved water rights of the Tribes.

Item 6. Funding of all items from the Garrison Diversion Unit funds. Many of the items recommended in the Committee's report are not the subject of P.L. 99-294. Therefore, P.L. 99-294 would need to be amended, or other authorizing legislation enacted, to the extent that the appropriations authorized are inadequate to cover the Committee's recommendations for the full development of irrigation potential on the reservations, as well as the development of municipal, industrial and rural water systems.

Item 7. Replacement of infrastructures lost by the creation of Garrison Dam and Lake Sakakawea and Oahe Dam and Lake Oahe. The Committee's recommendations identify the need for replacement of lost infrastructures related to health, education, housing, and roads. The Department and the Indian Health Service have adequate authority to address this recommendation, although it would be necessary for Congress to appropriate funds for the purpose. The need for the infrastructures so identified should be evaluated by the appropriate federal agencies and included in the annual program and budget plans for each agency, if appropriate. As a general principle, we believe this need must be weighed fairly against competing needs for such facilities at other locations.

Item 8. Preferential rights to Pick-Sloan Missouri River Basin Power. The Committee's report recommends that both the Fort Berthold and the Standing Rock Sioux Reservations be assured of a firm supply of Pick-Sloan Basin Program power for purposes of municipal, rural, and industrial water systems (M&I) and irrigation (both first lift pumping power and power for sprinkler pressurization).

Under recently enacted P.L. 99-294, both the Fort Berthold and Standing Rock Reservations are entitled to a firm supply of power for M&I. The Tribes would pay the Western Area Power Administration the wholesale firm power service rate (firm power service rate), which is currently approximately 7.4 mills per kwh, for M&I power. As to irrigation, under P.L. 99-294, certain lands on the Standing Rock Sioux and Fort Berthold Reservations are authorized for development as irrigation areas of the Garrison Diversion Project, Pick-Sloan Missouri Basin Program, and therefore are entitled to a firm supply of irrigation power. However, it is the policy of the Bureau of Reclamation that power for authorized irrigation projects of the Pick-Sloan Missouri Basin Program will be provided only for first lift pumping uses, not for sprinkler pressurization, unless otherwise specifically provided for by legislation. (The rate paid by irrigators for first lift pumping power is the Bureau of Reclamation project use rate (project use rate)).

Under the WEB Act, P.L. 97-273, the Secretary of the Interior, in cooperation with the Secretary of Energy, was authorized to make Pick-Sloan power available to five Indian tribes, including the Standing Rock Sioux Tribe. Pursuant to the WEB Act, the Departments of the Interior and Energy are providing Pick-Sloan power to the irrigation projects constructed for the tribes named in the WEB Act (including Standing Rock) for both first lift pumping and sprinkler pressurization uses. Those tribes pay the project use rate for first lift pumping power and the firm power service rate for sprinkler pressurization power. Pick-Sloan power for sprinkler pressurization for the additional irrigation facilities on the Standing Rock Reservation which are authorized to be developed under P.L. 99-294 may be made available to the Standing Rock Tribe pursuant to the WEB Act.

The Fort Berthold Reservation, however, is not named in the WEB Act, nor does any other legislation appear to provide it with a firm supply of Pick-Sloan power for sprinkler pressurization use. Thus, Fort Berthold appears to be entitled only to a firm supply of Pick-Sloan power for first lift pumping use. The Three Affiliated Tribes of Fort Berthold could seek power for sprinkler pressurization, at the firm power service rate, from the Department of Energy through the regular contractual process; however, we understand that no contracted power will be available until the year 2001. Thus, if the decision is made to assure Fort Berthold of power for sprinkler pressurization use, in our view, additional legislation would be needed.

Item 9. Additional financial compensation. The additional compensation recommended by the Committee would require legislation. In our view, this recommendation should not be implemented. The Committee's report does not provide adequate documentation to establish that the Tribes are legally entitled to additional financial compensation in the form of the substitute or replacement value of the economic bases lost as a result of the siting of Lake Sakakawea or Lake Oahe.

Item 10. Other items the Committee deems appropriate. The appropriation ceilings authorized in P.L. 99-294 are inadequate to construct the municipal, industrial, and rural water supply systems contemplated in the Committee's recommendations.

While the Department could take administrative action to seek the recommended transfer of the interests of agricultural and ranch-related lenders on the reservations from the Farmers Home Administration (FmHA) to the Bureau of Indian Affairs credit program, the Department does not believe this recommendation should be implemented. If the loans with FmHA are still viable, such a transfer is unnecessary. If the loans are not viable, it does not serve the best interests of the BIA credit program, which must serve the interests of Indian individuals and tribes nationwide, to assume responsibility for such loans.

Recently, BIA and FmHA officials met with tribal representatives to discuss support for a program of farm loan refinancing on the Fort Berthold Reservation. Our agencies are reviewing a proposal under which the respective agencies would exercise authorities under existing laws and regulations to facilitate the refinancing of viable farming operations through private institutions.

The Department has no objection to facilitating the establishment of an "Indian desk" within the U.S. Army Corps of Engineers to assist in the resolution of Indian concerns resulting from the operation of the Missouri River reservoirs by the Corps. However, since this recommendation most directly concerns the Corps, you may wish to pursue it directly with that agency.

The Department is willing to take steps administratively to coordinate its Fish and Wildlife and Law Enforcement programs with the Standing Rock Sioux Tribe in order to protect the Tribe's hunting and fishing rights on the reservation in and around Lake Oahe.

The Department has not identified a schedule for implementing the non-legislative recommendations of the Committee. Such a schedule could be developed for recommendations with which we concur after further consultation with the Tribes.

Regarding your request for a draft bill to implement the findings and recommendations of the Committee, we originally interpreted your letter as requesting legislation which the Department and the Administration can support. Submission of such a bill will, of course, be dependent on Departmental and OMB review of the Committee Report in the context of broad Administration policies and FY 1988 budget constraints. We subsequently learned from your staff that you only require at this time a drafting service which does not necessarily reflect the position of the Department or the Administration. We will be pleased to comply with this request as soon as possible. Thank you for your interest in ensuring that the concerns of the Indian citizens in North Dakota about the Pick-Sloan Program are addressed fairly and completely.

Sincerely

Ross O Swimmer

Ross O. Swimmer
Assistant Secretary - Indian Affairs

SRD

MANAGING BOARD
Dr. William Gorman
505-522-2286
Dr. Robert R. Lansford
505-522-2660

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MEMORANDUM

TO: Raymond Cross, Attorney
Federated Tribes
Fort Berthold Indian Reservation
New Town, North Dakota 58767

DATE: May 29, 1987

FROM: Wm. D. Gorman

SUBJECT: Impact Analysis of Alternative Methods of Using Power Revenues to Finance "Just Compensation" for the Fort Berthold and Standing Rock Sioux Indian Reservations

Basic Premise: The federated Tribes of the Fort Berthold Indian Reservation and the Standing Rock Sioux Indians were not justly compensated for the taking of their lands for the construction of the Oahe and Garrison Reservoirs under the Pick-Sloan Missouri Basin Program. This has been clearly verified by the U.S. Government's own selected committee, the Garrison Unit Joint Tribal Advisory Committee (JTAC). If the federal government had fully carried out its responsibilities under the law during the construction of the reservoirs and the taking of the lands, the costs of adequately compensating the Tribes would have been included in the total Pick-Sloan Project costs. Therefore, it is logical for Congress in readdressing the situation to consider inserting the "Just Compensation" as a project cost even at this late date as an alternative to payment to the Tribes through direct appropriations by Congress.

Acceptance of this basic premise puts the consideration of the project cost proposal in a totally different category from other proposals to build additional features or finance other projects out of Pick-Sloan power revenues. The point being the costs should have been included in the first place.

Summary of Possible Alternative Methods of Using Pick-Sloan Power or Power Revenues:

1. Power set aside. This would involve setting aside a block of power either now or in the future which the Tribes could either use or sell through the existing distribution system.

2. Include the "just compensation amounts" as project costs and pay the Tribes out of existing power revenues over a period of years . . . possibly 30 to 50.

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3. Include the "just compensation amounts" as project costs and pay the Tribes over a period of years (30 to 50) by passing the increased cost on to the existing power users.

4. Some combination of the above alternatives.

Stated Amounts of "Just Compensation" Due:

Federated Tribes of the Fort Berthold Reservation - $178,400,000.

Standing Rock Sioux--various estimates. For purposes of this analysis, I have assumed it to be approximately equal to the $178.4 million due to the Fort Berthold Tribes.

Summary Assessment of the Possible Impacts of the Above Alternatives:

1. Power set aside. The Pick-Sloan Project has a generating capacity of approximately 2,000 mega watts. Using a 60% load factor, this results in approximately 1,200 mega watts of saleable power on the average. The current preference power rate is approximately 7.5 mills per kilowatt hour and all available power is marketed.

   If one were to amortize a loan in the amount of $178,400,000 over a 50-year period using an interest rate of 4%, the annual payments would amount to $8,304,556. The doubling of the amount to allow for the payment to both Reservations amounts to $16,609,112 annually. One mega watt of power selling at a rate of 7.5 mills with a 60% load factor yield of $39,420 in annual revenues. Using the current power revenue price of 7.5 mills per kilowatt hour, it would require approximately 421 mega watts of power set aside for a 50-year period to pay the $16,609,112 annually to the Tribes. This amounts to 21% of the total power generated (421 MW ÷ 2000 MW).

   The present power rate of 7.5 mills is low compared to wholesale prices paid for electricity generated from other sources. If the Tribes could market power allocated to them at more competitive rates, the amount of required power that would need to be set aside would be reduced. A rate of 38 mills would reduce the power set aside requirement to 4%.

   A more complete economic evaluation of this alternative requires a market study including forecasting probable future market values of electrical energy. I do not have any feel for the political acceptability of this proposal.

2. Payment Out of Existing Power Revenues with No Increase in Preference User Rates:

This approach would require setting up a repayment account, presumably for 50 years. This is at least theoretically possible since the project will continue to produce power revenues into the indefinite future. Even if $16,609,112 of funds are diverted to the Tribes, the federal treasure will still be repaid for the "just compensation" costs out of future Project revenues. However, in order for this proposal to be feasible, there has to be $16,609,112 in annual revenues available from Pick-Sloan power sales.

I do not have the annual power revenues and expenditures for the Pick-Sloan Project, but to avoid raising preference power rates, annual dollars available for investment payoff would have to exceed the $16.6 million payment to the Tribes. The annual investment pay-out dollars are those funds remaining from power revenues after payments for O & M, interest, and capital replacements. It is my understanding that current investment payoff funds are less than the $16.6 million figure.

This approach would not require any direct federal appropriations nor an increase in preference power rates if current investment payoff funds exceed the required $16.6 million. There would be a fiscal impact because revenues presently going to the federal treasury would be reduced by $16.6 million per year for 50 years. This option could accomplish the objectives of the Tribe and offers some political attributes. It does not require an appropriation, and it may not require increasing power rates. Information on the amount of available investment payoff funds is needed before this option can be fully evaluated.

3. Pass the Costs on to Preference Power Users through Increased Rates:

It is my understanding that the current preference power rate is 7.5 mills per kilowatts. Using a 60% load factor each 1.0 mill charged generates $10,572,000 in annual revenues. Hence, it would require an increase of 1.58 mills or 21% to get the additional revenues to meet the $16.6 million annual payment to the Tribes. This additional rate factor would have to be included for a period of 50 years.

The advantages of this option is that it has no impact on the federal treasury. The disadvantage is that it will require a power rate increase which may make it difficult politically. However, the actual cost impact on retail power consumers may be minimal. In order to assess the percentage impact on industrial and consumer rates, it will be necessary to obtain complete information on the amount of Pick-Sloan power and the amounts and costs of other power sources used by all Pick-Sloan preference power users. If this option is selected, it will be necessary to collect this data in order to be prepared to answer questions pertaining to the financial impact on the retail customers.

Although, I don't have the information needed to accurately assess the impact, I would be surprised if the average impact exceeded a 5% rate increase at the retail level.

4. Mixed Alternative Options:

It may be desirable to pay the Tribes out of existing available capital repayment funds and avoid any increase in power rates in the near term. I have attached a computer printout showing the results of a variable pay-out program. Under this scenario, each Tribe would receive a $5 million payment annually for 5 years, increasing to $7.5 million for years 6 through 10 and increasing to $9,624,939 in years 11 through 50. This payment plan repays the $178,400,000 "just compensation" to each Tribe over a 50-year period including 4% interest on the unpaid balance. The attached variable payment scenario is just one of many that could be devised depending upon financial and political constraints.

Other Considerations

The above analysis using the $8,304,556 annual payments per Tribe over a 50-year period was based on a 4% interest rate. A 4% interest rate does not allow for much, if any, inflation over time. If one expects inflation in the future (which I do), a higher interest rate is appropriate. The following table shows the impact of changes in the interest rate on retirement of a $178,400,000 debt over 30- and 50-year periods.

Interest Rate (percent)	Annual Payment 30 years	Annual Payment 50 years
4.0	10,316,890	8,304,556
5.0	11,605,176	9,772,170
6.0	12,960,566	11,318,461
7.0	14,376,614	12,926,837
8.0	15,846,814	14,582,926
9.0	17,364,805	16,274,873

It may be desirable and possible to tie the interest rate and thus annual payments to the federal 3-month Treasury Bill rate. This would require the calculation of the payments on an annual basis.

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505-522-1660

Southwest Research and Development Company
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May 29, 1987

Mr. Raymond Cross, Attorney
Legal Department
Tribal Administration Buildings
New Town, ND 58763

Dear Mr. Cross:

I have attached a copy of the analysis paper I promised you concerning the "Just Compensation" and Pick-Sloan power revenues. I hope this is of value to you. I need more information on the power revenues and costs for the Pick-Sloan Project before we can go much further. We also need the information on all power sources and costs for Pick-Sloan power users before the economic impact on the final power users can be estimated.

After giving considerable thought to this issue, I believe the option of passing all or part of the costs associated with "just compensation payments" along to the power users may be the most viable. It should have been a project cost when they built the project. The current charges for preference power are very low . . . so low that an increase of 20% (wholesale price) will not generate much sympathy from most people (including Congress) who are presently paying much higher rates.

The power set aside option should not be discarded without further thought. If inflation increases and particular energy costs as I expect they will, a 5% set aside (2.5% for each Tribe) could result in revenues far in excess of $178,400,000 plus interest at 4% on the unpaid balance paid out over 50 years. It is necessary to get rights to use WAPA's distribution network written into the law if this option is pursued.

If you have any questions, please call.

Sincerely,

Bill

William D. Gorman
President

Attachment

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Southwest Research and Development Company
1825 IMPERIAL RIDGE • LAS CRUCES, NEW MEXICO 88001

May 29, 1987

Mr. Dick Scirk
Western Area Power Administration
Box EGY
Billings, MT 59101

Dear Mr. Scirk:

Mr. Raymond Cross asked that I send a copy of the attached memorandum for your comments. Please give us a critique of the alternatives and bring to our attention any error or omissions. We are also interested in your general assessment of the technical and political feasibility of the various options.

If you have any questions, please give me a call at (505) 646-3923.

Sincerely,

William D. Gorman
President

Attachment

xc: Mr. Raymond Cross

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